Supreme Court, U.S.
FILED

No. (1)

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In The Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E. J. FAYARD, and C. L. WEBB,

Respondents.

On Petition for a *Writ* of *Certiorari* to the Supreme Court of the State of Louisiana

PETITION FOR *WRIT* OF *CERTIORARI*

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QUESTIONS PRESENTED FOR REVIEW

I. SHOULD THE PETITION HAVE BEEN VULNERABLE TO A PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION?

II. WAS PETITIONER PROVIDED NO SUBSTANTIAL RECOURSE DESPITE HAVING BEEN DEPRIVED OF HIS MEANS OF LIVELIHOOD, CONTRARY TO CONTROLLING AUTHORITY ANNOUNCED BY THIS COURT?

III. DID THE COURTS BELOW IMPROPERLY TREAT THIS CASE AS IF IT INVOLVED EXCLUSIVELY AN ISSUE OF PROCEDURAL DUE PROCESS WHEN, IN FACT, IT INVOLVED A DENIAL OF SUBSTANTIVE DUE PROCESS?

LIST OF PARTIES TO PROCEEDINGS BELOW

Pursuant to Sup. Ct. R. 14(b), the Petitioner submits the following list of parties to the proceedings before the Supreme Court of the State of Louisiana:

The Petitioner is Billy Patin, who was Plaintiff-Petitioner in the Supreme Court of the State of Louisiana.

The Respondents are Larry Munster, E.J. Fayard, and C.L. Webb, who were the Defendants-Respondents below.

There are no parent companies or nonwholly owned subsidiaries involved in this case.

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OPINIONS BELOW

The Judgment of the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, dated August 17, 1999, granting the Motion of the Respondents to dismiss Petitioner's Original Petition is set forth in the Appendix beginning at A-1.

The Written Reasons clarifying the earlier Oral Order of the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, dated July 16, 1999, is set forth in the Appendix beginning at A-4.

The Opinion and Order of the Court of Appeal for the Third Circuit, State of Louisiana, affirming the Order of the District Court, dated April 5, 2000, is reported at *Patin v. Munster*, 760 So. 2d 447 (La. Ct. App. 3d Cir. 2000), and is set out in the Appendix beginning at A-7.

The Order of the Court of Appeal denying the Petition for Rehearing is set out in the Appendix beginning at A-16.

The Order of the Supreme Court of the State of Louisiana, dated September 29, 2000, is set out in the Appendix beginning at A-18.

STATEMENT OF JURISDICTION

The final judgment of the Supreme Court of the State of Louisiana affirming the order of the Court of Appeal was entered on September 29, 2000.

This Court has jurisdiction to review the orders and judgment of the Supreme Court of Louisiana under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of the section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

La. Rev. Stat. Ann. § 4:154 provides:

> § 154. Administrative procedure; appeal to the commission and review of commission rulings
>
> A. Except as otherwise provided by this Section, the commission's hearings,

practice and procedure, and rule making procedure are as provided in the Administrative Procedure Act; however, in cases made the subject of judicial review, the court may not extend or continue beyond ten (10) days from date of issuance any stay order or temporary restraining order issued by it, except:

(1) Upon agreement of counsel for all parties, or

(2) Absent such agreement, by order of the court, but only after a contradictory hearing held no later than the tenth (10th) day following the issuance of such stay order or temporary restraining order and then only upon a showing by a party that a denial of such extension or continuation would be prejudicial to that party's opportunity to cause the court to affirm, modify, or reverse the decision appealed from or to be reviewed.

B. A final appeal, in the case of any person penalized, or disciplined by the stewards, may be taken to the commission.

C. Such an appeal must be filed in writing at the office of the commission within five days of the date of said penalty or imposition of said discipline.

D. Such an appeal must be signed by the person making it and must set forth his reason therefor.

E. An appeal from the decision of the stewards to the commission shall not affect such decision until the appeal has been acted upon by the commission.

F. The commission must grant a hearing within ten days of the receipt of this appeal, and must render a decision within forty-eight hours following the conclusion of the appeal hearing. Any continuance of a hearing must be reasonable in duration and for just cause.

STATEMENT OF THE CASE

Proceedings Below

On June 1, 1999, Petitioner instituted an action in the Fifteenth Judicial District Court, Parish of Lafayette, State of Louisiana, against Respondents, asserting that while acting under color of state law these Respondents deprived Petitioner of his right of constitutional due process in violation of 42 U.S.C. § 1983. The court entered a temporary restraining order as of May 29, 1999. The temporary restraining order was renewed on June 7, June 17, June 28, and July 7, 1999. On July 7, 1999, Respondents filed an exception of no cause of action, which is the Louisiana procedural equivalent of a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed R. Civ. P. 12(b)(6), and

exceptions on other grounds not relevant here. By its order entered on August 17, 1999, confirming the oral order entered on July 14, 1999, the district court granted Respondents' exception of no cause of action on the ground that Petitioner had failed to exhaust his available administrative remedies. On July 16, 1999, the district court entered Written Reasons for its oral order, again on the ground that Respondent had failed to exhaust his administrative remedies, a precondition, the court reasoned, for invoking relief under 42 U.S.C. § 1983.

Petitioners appealed the decision of the district court to the Court of Appeal for the Third Circuit, State of Louisiana, which affirmed the judgment of the district court. The Court of Appeal concluded that Petitioner had alleged a denial of his procedural right to due process, as opposed to his right to substantive due process. Accordingly, his failure to exhaust his administrative remedies precluded a recovery under 42 U.S.C. § 1983. The Supreme Court of the State of Louisiana, without rendering a written opinion, denied Petitioner's application to that court for a writ of certiorari. This application for Writ of Certiorari followed.

STATEMENT OF THE FACTS

Petitioner is a horse racing jockey, licensed in Arkansas and Louisiana. Respondents are horse racing stewards appointed by the Louisiana State Racing Commission. Around noon on May 27, 1999, Petitioner's attorney in Lafayette, Louisiana, received a facsimile transmission indicating that there would be a hearing that

afternoon at 5:30 at Evangeline Downs near Lafayette to determine Petitioner's continuing eligibility to remain a licensed jockey in Louisiana. Petitioner's attorney appeared at the hearing to contest the conducting of the hearing because Petitioner had not been provided with notice in accordance with La. Rev. Stat. Ann. § 49:955. Respondents conducted the hearing over counsel's objection at about 5:30 p.m. on that date and revoked Petitioner's license. No testimony was taken at the hearing, nor were any documents received in evidence. Instead, Petitioner alleged in ¶ 9 of his petition to the trial court that he "[was] informed, believes, and therefore avers that the only basis for the Stewards' withdrawal of Billy Patin's jockey license was [Respondents'] reliance on an alleged faxsimile [sic] transmission of a purported rule made by the Arkansas Racing Commission, which faxsimile was not certified, whereby said commission purportedly suspended Billy Patin's license to function as a jockey in the State of Arkansas only." This action followed.

ARGUMENT

I. THE PETITION SHOULD NOT HAVE BEEN VULNERABLE TO A PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION.

Procedurally, this case was dismissed after the trial court granted the Respondents' peremptory exception of no cause of action, La. Code Civ. Proc. art. 927(A)(4), which is similar to Fed. R. Civ. P. 12(b)(6). The Louisiana Code of Civil Procedure provides, in pertinent part, as follows:

> Art. 927. Objections raised by peremptory exception
>
> A. The objections which may be raised through the peremptory exception include but are not limited to the following:
>
> . . . .
>
> (4) No cause of action[.]

La. Code Civ. Proc. art. 927(A)(4).

Because the exception of no cause of action presents only a question of law, the district court's ruling dismissing a plaintiff's petition is subject to *de novo* review. *Craft v. Allstate Insurance Co.*, 663 So. 2d 116 (La. Ct. App. 3d Cir. 1995). A petition for relief should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts entitling him to any relief. *Everything on Wheels v. Subaru South*, 616 So. 2d 1234 (La. 1993). The exception is triable solely on the face of the petition and any documents or exhibits annexed to the petition, and no evidence may be admitted in support of the exception. *Young v. Central Louisiana Legal Services*, 432 So. 2d 1072 (La. Ct. App. 3d Cir. 1983). In viewing the petition, the court must accept all the facts contained in the petition as true, *Everything on Wheels v. Subaru South*, and these facts must be viewed in a light most favorable to the plaintiff with all doubts resolved in favor of the plaintiff. *Ventura v. Cox Cable Jefferson Parish*, 583 So. 2d 1237 (La. Ct. App. 5th Cir. 1991). Where it can reasonably do so, the court must maintain the petition against the exception so as to afford plaintiff the opportunity to present his evidence.

Sevarg Co. v. Energy Drilling Co., 591 So. 2d 1278 (La. Ct. App. 3d Cir. 1991).

The Court is familiar with the standard to be applied in cases involving dispositions pursuant to Fed. R. Civ. P. 12(b)(6). *Village of Willowbrook v. Olech*, 120 S. Ct. 1073 (2000). As will become apparent presently, the Louisiana courts improvidently dismissed Petitioner's Original Petition for failure to state a cause of action.

II. PETITIONER WAS PROVIDED NO SUBSTANTIAL RECOURSE DESPITE HAVING BEEN DEPRIVED OF HIS MEANS OF LIVELIHOOD, CONTRARY TO CONTROLLING AUTHORITY ANNOUNCED BY THIS COURT.

The Notice of Hearing with which Petitioner was provided scarcely five hours before the hearing to determine whether his racing license should be revoked (and attached as an exhibit to Petitioner's petition for relief) provided as follows:

> This is to notice you that an administrative hearing will be held regarding Jockey Billy Patin's eligibility in Accordance with LRC 4:150 and LRS 4:152.
>
> The hearing will be held on May 27, 1999, at 5:30PM in the steward's office at Evangeline Downs. This notice is to advise you of your right to have an attorney present at this hearing.

> You are hereby commanded to bring with you any and all documents, letters, pictures, or other proof that relates in any way to this matter.
>
> You are also notified that it is your responsibility to transport and arrange the appearance of any and all witnesses that may be required at this hearing.

It is worthy of note that no basis for the action is stated, nor is there any indication of the nature of the evidence against Petitioner. Instead, the notice does no more than advise the recipient that the hearing will be held scarcely more than five hours hence to determine Petitioner's ability to continue earning his living as a horse racing jockey. If the issue before the Court were solely the sufficiency of the notice to enable Petitioner to prepare his response and refute the charges (whatever they may have been) being laid against him, one can only surmise that this Petition would be speedily granted, the judgment below reversed, and the case remanded with instructions forthwith to conduct a trial.

The Louisiana Court of Appeal has recognized as much in another, similar case. In *Benoit v. Louisiana State Racing Commission*, 576 So. 2d 578 (La. Ct. App. 4th Cir. 1991), a trainer was accused of violating a rule governing horse racing in Louisiana by unlawfully selling an electrical device. After examination by the racing stewards, the matter was referred by them to the racing commission for a hearing. The notice provided to the respondent trainer was held by the trial court to have been defective because it cited an incorrect

provision of the rules as stating the basis for the adjudicatory action. The Louisiana Court of Appeal agreed.

> The trial judge considered the notice deficient and concluded that without proper notice of the violation of LAC 35:1801 B (7), the Commission had violated Benoit's right to due process by conducting the hearing relevant to and suspending him pursuant to that rule. We cannot say that this conclusion by the trial judge was clearly wrong.

Id. at 580. If a notice that incorrectly identifies the basis for the alleged violation is so deficient as to violate the subject's right to due process, then clearly a notice that effectively is no notice at all, as in this case, even more clearly violates due process.

The Supreme Court of Louisiana rendered no opinion in connection with its order, so it can only be surmised that it found no reason to quarrel with the reasons given for affirming the trial court that were stated in the opinion of the Louisiana Court of Appeal. *Patin v. Munster*, 760 So. 2d 447 (La. Ct. App. 3d Cir. 2000). It is to that opinion that Petitioner respectfully directs the Court's attention. The court summarized Petitioner's position below as follows:

> In his brief Patin has alleged that the stewards have deprived him of his constitutional right of due process in two ways. First, he claims that the stewards violated his right of due process by scheduling a hearing on the revocation of his racing

> license with only five hours notice and without specifying the charges against him or the basis for their revocation of his license. Second, he claims that the stewards' sole reliance on a judgment of the Arkansas State Racing Commission violated his right to due process because that judgment had not been made executory in Louisiana.
>
> The trial court found that Patin had raised procedural due process claims, which could be satisfied by the adequate administrative remedies provided in La.R.S. 4:141 et seq. The trial court concluded that the failure to exhaust these remedies precluded Patin from stating a cause of action pursuant to 42 U.S.C. § 1983 and from establishing irreparable injury as grounds for a temporary restraining order and preliminary injunction.

Id. at 449.

It is well established under the doctrine announced in *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 516 (1982), that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to [42 U.S.C.] § 1983." The Court of Appeal concluded, however, that the doctrine announced in *Patsy* is limited to deprivations of substantive, as opposed to procedural, due process. The Court of Appeal concluded that the deprivation alleged by Petitioner was in the nature of procedural due process, rather than substantive due process.

Because Petitioner (and others presumably similarly situated) had a right of recourse and appeal under state law, *see Caracci v. Louisiana State Racing Commission*, 556 So. 2d 1249 (La. 1990), the right to pursue recourse in court under 42 U.S.C. § 1983 had not yet matured. In the words of the Court of Appeal, "[Petitioner] does not yet have an actionable procedural due process claim." *Patin v. Munster*, 760 So. 2d at 451.

In reaching its conclusion, the Court of Appeal analyzed and attempted to reconcile *Zinermon v. Burch*, 494 U.S. 113 (1990), with *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984). The court's analysis provides the heart of its rationale and the key to where that analysis went wrong.

> Prior to *Zinermon*, the *Parratt-Hudson* doctrine applied to deprivations of property, whether intentional or negligent, and provided that random, unauthorized deprivations did not violate procedural due process if adequate post-deprivation remedies existed under state law. While the *Zinermon* court expanded the *Parratt-Hudson* doctrine to include deprivations of liberty interests, it limited that doctrine somewhat by refusing to apply it when the state vests in one state actor both the power to deprive the plaintiff of his liberty interest and the power to provide pre-deprivation process. *This limitation is not relevant in the present case because it was the*

> *racing commission, as neutral decision-maker, who possessed the ultimate power to revoke Patin's jockey license, not the stewards.*

Patin v. Munster, 760 So. 2d at 450 (emphasis added).

Characterizing the racing commission as "neutral" presupposes the outcome of a trial on the merits of this case. It may be that the stewards were acting entirely on their own in depriving Petitioner of any substantial right to be heard at the hearing. It is equally plausible that the stewards, Respondents herein, were acting pursuant to authority granted by and at the behest of the racing commission. Whether the constitutional deprivation is narrowly characterized as a denial of due process or a denial of equal protection, the result is substantially the same. In the end, Petitioner is deprived of his livelihood without first having been given an opportunity to present evidence and arguments to rebut the allegations against him, an opportunity that the Supreme Court of Louisiana contemplated would be afforded to anyone adversely affected by a determination by the racing stewards.

This Court has universally condemned this kind of arbitrary conduct, in whatever guise it is couched. A citizen has every right to expect that he will be given a meaningful opportunity to be heard before privileges to which he is entitled may be revoked or withheld as a result of state action.

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no

> rational basis for the difference in treatment. *See Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U. S. 336 (1989). In so doing, we have explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co.*, *supra*, at 445 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U. S. 350, 352 (1918)).

Village of Willowbrook v. Olech, 120 S. Ct. at 1074-75.

The substance of this Court's decisions in cases like *Olech* is to protect individuals from arbitrary invasions of their right to engage in their occupation without affording the individual adversely affected by state action comprehensive due process protection. Due process protection is to be construed and applied broadly, not narrowly. In Louisiana, a citizen is confronted with different interpretations of the *Parratt-Hudson* doctrine, invoked by the Court of Appeal in this case, leading to different outcomes depending on whether one finds oneself in state or federal court, even though the claim arises under the same facts. This, of course, is one of the circumstances where this Court will grant relief in the nature of a petition for writ of certiorari.

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . . .
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals[.]

Sup. Ct. R. 10(b).

The Fifth Circuit perceives and applies the *Parratt-Hudson* doctrine very differently than do the Louisiana Court of Appeal and the Louisiana Supreme Court. Here is how the Fifth Circuit explicated the controlling authority of this Court as it applies to cases like this one:

> In recent years federal courts have tried to map the boundaries of the *Parratt/Hudson* doctrine. . . . In *Zinermon v. Burch* the Court held unconstitutional the actions of state officials under a Florida law allowing voluntary admissions into state mental hospitals. The Court found that the Florida law delegated to state officials too much authority in deciding when to deny a patient the additional safeguards of an involuntary

commitment. *Zinermon* refused to apply *Parratt/Hudson* because the case lacked three predeprivation conditions necessary to that doctrine. In a case where those conditions do exist, however, "a statutory provision for a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process." The conditions are, first, that the deprivation be unpredictable; second, that predeprivation process be impossible, making any additional safeguard useless; and, third, that the conduct of the state actor be unauthorized. In such a case "the State cannot be required constitutionally to do the impossible by providing predeprivation process."

Zinermon treated *Parratt* and *Hudson* as two unusual cases in which the governmental interests prevailed under *Mathews*. The *Zinermon* majority may have intended to weaken *Parratt/Hudson*. To the extent the doctrine needed resuscitation, we are bound to notice its resuscitation in this Circuit by this Court's en banc decision in *Caine v. Hardy* [905 F.2d 858 (5th Cir. 1990)]. *Caine* reads *Zinermon* to effect only a "wrinkle" on the *Parratt/Hudson* doctrine.

In *Caine*, this Court held that *Parratt/Hudson* prevents the procedural due

> process claim of a doctor deprived of his staff privileges at a public hospital because the three predeprivation conditions highlighted by *Zinermon* were each present. *Caine* reads those conditions narrowly enough to make this case, although it involves a different sort of deprivation in an entirely different context, legally indistinguishable. The *Parratt/Hudson* doctrine applies to Dr. Charbonnet's case. For the deprivation of his property he must now look to state law for relief.

Charbonnet v. Lee, 951 F.2d 638, 642 (5th Cir.) (footnotes omitted), *cert. denied*, 505 U.S. 1205 (1992).

It is evident, as the Court of Appeal apparently recognized, that the three factors identified by the Fifth Circuit in *Charbonnet* and elsewhere are not present here. The actions of the Respondent stewards were entirely predictable, since the Court of Appeal concluded that they were doing precisely what they were engaged by the State of Louisiana to do—namely, to investigate and remedy, as appropriate, alleged violations of the rules of horse racing by licensed persons. Their conduct was authorized by the State through its racing commission. While the commissioners play a role in the revocation or denial of a jockey's license, it is on the basis of the hearing conducted by the stewards that the commissioners rely. Review by the commissioners is not *de novo* but, instead, is on the basis of the record developed by the stewards.

To put the matter differently, since the commissioners, who have final authority over Petitioner's license, rely on the factual findings of the stewards, then it is fundamental that Petitioner receive a full and fair hearing on proper notice in the first instance. He is not entitled to another hearing, only to a review of the findings of the stewards entered as a result of the hearing. It can hardly be said that he has been afforded due process when he has been given no meaningful opportunity to refute the evidence adduced against him at the hearing.

What is there for the commissioners to review, and how can that administrative review be meaningful? All the factual findings upon which Respondents relied were wholly unrebutted since Petitioner was given no opportunity to prepare and thus to effectively to rebut them. That a public licensee is entitled to a predeprivation hearing is axiomatic, and that is the procedure contemplated by the governing law in Louisiana. Postdeprivation administrative review presupposes that the hearing produces findings that are susceptible of review. Here, that never occurred. Instead, the review by the racing commissioners would be wholly without substance, since there is no record upon which a valid decision can have been made.

To paraphrase the Fifth Circuit, unlike *Caine v. Hardy*, 905 F.2d 858 (5th Cir. 1990), the *Parratt/Hudson* doctrine does not prevent the procedural due process claim of a jockey deprived of his racing license from being adjudicated in court without prior administrative review because the three predeprivation conditions highlighted by *Zinermon* were not

each present. Applying the rationale of the Fifth Circuit, Petitioner's case should have gone forward to trial. Yet the Louisiana Court of Appeal has chosen to ignore the authority of the Fifth Circuit, which has far more experience with § 1983 claims than do the state appellate courts. Instead, the Court of Appeal has applied a far broader rule which would deny relief to almost every plaintiff with a substantial due process claim. It reaches that result regardless of whether the plaintiff deprived of a substantial property right has been afforded a meaningful opportunity to be heard. The practical result of the Louisiana Court of Appeal's decision in this case is that Petitioner is without a forum to seek review and relief.

The Court of Appeal relied on *Caracci v. Louisiana State Racing Commission* for the proposition that a jockey aggrieved by the adverse decision of the stewards has an appropriate means and forum for review. The Supreme Court of the State of Louisiana, however, obviously contemplated that the hearing afforded the aggrieved person should have been, at a minimum, meaningful. In other words, the aggrieved person shall have been given an opportunity at least to present evidence both on the merits of the accusation leveled against him and by way of mitigation of whatever sanction might be awarded. *See* La. Rev. Stat. Ann. § 49:955(b). Here, Petitioner had no such opportunity. Accordingly, the right of administrative review that the Court of Appeal presumed was available to Petitioner in fact was no review at all.

The application of the *Parratt-Hudson* doctrine by the Court of Appeal of the State of Louisiana in this case cannot

be squared or reconciled with the application of that doctrine in a federal court governed by the decisions of the United States Court of Appeals for the Fifth Circuit in *Charbonnet v. Lee* and cases following that authority. A citizen confronted with the same conduct by state officials, if seeking to have his deprivation of due process vindicated in a state court, would be subjected to a different standard of liability than would another citizen similarly situated who seeks vindication in a federal court. The state and federal courts would be applying the same law, but in a way that will have different results.

This case, in other words, presents a unique juxtaposition of both equal protection and due process principles. Petitioner has been deprived of a substantial property right without having been afforded due process. As the Louisiana Court of Appeal recognized, Petitioner's claim is governed, in the first instance, by federal constitutional principles. The Court of Appeal purported to apply the same authority announced by this Court that has been applied in analogous situations by the United States Court of Appeals for the Fifth Circuit, yet the result in this case is not consistent with that federal authority. It is respectfully submitted that this Court is obliged to reconcile that conflict by directing the Court of Appeal and the Supreme Court of the State of Louisiana to apply federal principles consistently with the law announced by this Court and as applied by the Fifth Circuit. The lack of uniformity in the application of the law is, in and of itself, a denial of due process and equal protection.

III. THE COURTS BELOW IMPROPERLY TREATED THIS CASE IS IF IT INVOLVED EXCLUSIVELY AN ISSUE OF PROCEDURAL DUE PROCESS WHEN, IN FACT, IT INVOLVED A DENIAL OF SUBSTANTIVE DUE PROCESS.

Petitioner urged, both before the Court of Appeal and the Supreme Court of the State of Louisiana, that he has been denied both procedural and substantive due process. In its opinion, the Court of Appeal ignored and disregarded Petitioner's claim of a denial of substantive due process, treating the case instead as if only a denial of procedural due process were involved.

The Court of Appeal relied for its decision, in pertinent part, on *Zinermon v. Burch*, which stands for the proposition that postdeprivation state remedies must be exhausted as a precondition to maintaining a § 1983 action, but only where there was no predeprivation hearing granted to the plaintiff. In this case, Petitioner was given a predeprivation hearing (of a sort) by Respondents, who, having received and considered only an uncertified presumptive administrative order from another state, revoked Petitioner's jockey's license. That they did so by giving effect to an adjudication rendered in another state without giving it domestic effect under Louisiana law provides the basis for Petitioner's substantive due process deprivation.

If this case had arisen in virtually any other context, the uncertified order of a tribunal in another state (Arkansas in this case) would have been given no effect unless that

adjudication had been domesticated in Louisiana pursuant to La. Code Civ. Proc. Ann. art. 2541. The purpose of that procedure, some variant of which is applied in all jurisdictions, is to create a presumption of regularity that attaches to such documents when domesticated under local law. In this case, however, the uncertified administrative decree from Arkansas was given conclusive effect, even though no presumption of regularity could attach to it. As a matter even of evidence, it is no more than the rankest hearsay, unrelieved by any exception to the general rule of the nonadmissability of hearsay.

This is precisely the kind of substantive due process violation condemned by *Zinermon*, yet upon which the Court of Appeal based its decision to deny relief to Petitioner. Any fair reading of *Zinermon* would lead to a result precisely opposite to that reached by the Court of Appeal.

> This general rule [that overlapping state remedies are generally irrelevant to the question of the existence of a cause of action under § 1983] applies in a straightforward way to two of the three kinds of § 1983 claims that may be brought against the State under the Due Process Clause of the Fourteenth Amendment. First, the Clause incorporates many of the specific protections defined in the Bill of Rights. A plaintiff may bring suit under § 1983 for state officials' violation of his rights to, e.g., freedom of speech or freedom from unreasonable searches and seizures.

> Second, the Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S., at 331. As to these two types of claims, *the constitutional violation actionable under § 1983 is complete when the wrongful action is taken*. *Id.*, at 338 (STEVENS, J., Concurring in judgments). A plaintiff, under *Monroe v. Pape* [365 U.S. 167 (1961)], may invoke § 1983 regardless of any state-tort remedy that might be available to compensate him for the deprivation of these rights.

Zinermon v. Burch, 494 U.S. at 125 (emphasis added).

The Court, thus far, has declined to define what state-created rights are entitled to the dignity of substantive due process protection. *See DeBlasio v. Zoning Board of Adjustment*, 53 F.3d 592, 600 n.9 (3d Cir.), *cert. denied*, 516 U.S. 937 (1995); *Contreras v. City of Chicago*, 119 F.3d 1286, 1295 (7th Cir. 1997). Here, the Court can articulate when, if at all, a person can be denied a license by the state to practice his occupation without first having had an adequate hearing upon due and sufficient notice. The hearing should be held consistently with state law, which, as in this case, requires that the evidentiary standards set forth by state law are applied. Petitioner has been denied the right to practice his occupation, clearly a property interest cognizable within the scope of Fourteenth Amendment due process. At a

minimum, Petitioner is entitled to a trial to develop the facts necessary to establish that he has been denied a substantial property interest without having been afforded due process.

Accordingly, this is a case where the application for a writ of certiorari is both authorized by the Court's rules and should be providently granted. Substantial issues involving the equal application of the law as announced by this Court are involved. This is not a case in which a decision would have a narrow application. Instead, it presents substantial issues of constitutional law that are of general interest and applicability.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that a Writ of Certiorari issue to the Supreme Court of the State of Louisiana in this case and that, after full briefing and argument, this Court reverse the judgment of the Court of Appeal of Louisiana and direct that the case be remanded to the Circuit Court for the Parish of Lafayette for trial.

Respectfully submitted,

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No. _____

In The Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E. J. FAYARD, and C. L. WEBB,

Respondents.

On Petition for a *Writ* of *Certiorari* to the Supreme Court of the State of Louisiana

APPENDIX

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BILLY PATIN	**15TH JUDICIAL DISTRICT COURT**
VERSUS	**DOCKET NO. 99-2581-C**
LARRY MUNSTER, PARISH OF LAFAYETTE E.J. FAYARD and C.L. WEBB	**STATE OF LOUISIANA**

JUDGMENT

Defendant's Motion to Dissolve Temporary Order, Plaintiff's Application for Preliminary Injunction, and Defendant's Motion for protective Order came for hearing on July 14, 1999.

Present Were: Billy Patin and his attorneys, J. Minos Simon and Bradley Duane Watts
And
John Kolwe, attorney for E.J. Fayard and C.L. Webb, and by stipulation of Kim Raines Chatelain, representing the interest of Larry Munster

After considering the various briefs filed into the record by the parties and the oral argument of counsel on July 14, 1999, and for reasons orally assigned following the hearing, the court finds the Plaintiff, Billy Patin, has failed to exhaust administrative remedies before the Louisiana State Racing Commission as provided in La. R.S. 4:154., and therefore Billy Patin has failed to state a cause of action

against the defendants herein. The court further finds that the Temporary Restraining Order issued by the court on July 8, 1999 was improperly issued and therefore should be dissolved. Accordingly, it is:

ORDERED, ADJUDGED AND DECREED that Billy Patin's Original Petition for Injunction and Damages should be dismissed for failure to state a cause of action.

IT FURTHER ORDERED, ADJUDGED AND DECREED that the Temporary Restraining Order issued by the court on July 8, 1999 be dissolved.

IT FURTHER ORDERED, ADJUDGED AND DECREED the Billy Patin be cast with all costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff be cast with a portion of Defendants' attorneys' fees in the amount of $500.00 for each defense attorney as damages for the wrongful issuance of the Temporary Restraining Order, in accordance with Article 3608 of Louisiana Code of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Protective Order is denied.

JUDGMENT RENDERED this 3rd day of ~~July~~ August, 1999.

Abbeville, Louisiana

s/_____

DISTRICT JUDGE

STATE OF LOUISIANA PARISH OF LAFAYETTE

I hereby certify that a certified copy of this judgment has been mailed, ~~served~~ on all parties this 18 day of Aug, 1999

s/_____

Dy. Clerk of Court

cc: s/_____

FILED THIS 17

DAY OF Aug 1999

s/_____

DY. CLERK OF COURT

A TRUE COPY ATTEST

Lafayette, La. 8-18-99

s/_____

DY. CLERK OF COURT

BILLY PATIN

15TH JUDICIAL DISTRICT COURT

VERSUS

DOCKET NUMBER: 99-2581

LARRY MUNSTER,
LAFAYETTE PARISH,
ET AL

LOUISIANA

****

WRITTEN REASONS

The following is a clarification of the Court's ruling in this matter on June 14, 1999. The Court ordered that the temporary restraining order be dissolved, denied plaintiff's **(MR. PATIN'S)** request for preliminary injunction and denied defendants' motions to quash the deposition subpoena. In addition, the Court dismissed that plaintiff's suit for failure to state a cause of action.

La. R.S. 4:154 sets forth the administrative procedure that a jockey must follow subsequent to his license being revoked. However, instead of following this procedure and appealing the stewards' decision to the Louisiana State Racing Commission, **MR. PATIN** filed suit in the Fifteenth Judicial Court alleging that the actions by the stewards constituted a violation of his due process rights under 42 U.S.C. § 1983. **MR. PATIN** bases his § 1983 claim on the fact that he was only notified of the stewards' adjudication five and one-half hours notice prior to its commencement and the fact that he was subsequently denied his license therefore depriving him of his rights to property and liberty. Plaintiff argues that since he asserted a due process violation under 42 U.S.C. § 1983 he is not required to exhaust available state administrative

remedies before bringing this action in state court, Citing *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982).

While plaintiff is correct in his interpretation of *Patsy*, before reaching the step of circumventing administrative procedures he must first state a valid claim under 1983. Recovery under 42 U.S.C. § 1983 requires a plaintiff to allege and prove two essential elements: (1) that the defendant's conduct occurred under color state of state law, and (2) that the defendant's conduct deprived plaintiff of a right, privilege or immunity secured by the Constitution or a law of the United States, *Moresi v. State Department of wildlife and Fisheries*, 567 So.2d 1081, 1084 (La.1990).

It is this second prong which the court finds the plaintiff failed to satisfy. Although plaintiff has a property interest in his license under state law sufficient to invoke due process protections, and although the magnitude of his interest in avoiding suspension is substantial, the State also has an important interest in assuring the integrity of racing carried on under its auspices. This interest is sufficient justification for the stewards' authority to impose penalties without full blown due process being afforded at that stage of the proceedings, where the stewards' action was subject to immediate review and decision by the Louisiana State Racing Commission with attendant due process protections. See *Barry c. Barchi*, 443 U.S. 55 (1979); *Caracci v. Louisiana State Racing Com'n*, 556 So.2d 1249 (La. 1990).

Therefore, although **MR. PATIN** has asserted the deprivation of certain property rights, he has failed to allege violations sufficient to invoke the protections of the due

process clause and § 1983. Essentially, the plaintiff raised procedural due process claims which are satisfied by the adequate administrative remedies provided in La. R.S. 4:140 *et seq*. The Court finds that the plaintiff failure to exhaust these remedies precludes him from stating a cause of action under § 1983 and from establishing irreparable injury as grounds for a temporary restraining order and preliminary injunction.

Abbeville, Louisiana, this 16th day of July, 1999.

s/_____

DISTRICT JUDGE

Judgment rendered APRIL 5, 2000

Applications for rehearing may be filed within the delays allowed by La. Code Civ. P. art. 2166 or La. Code Crim. P. art. 922.

BILLY PATIN	*	NO. 99-1739
VERSUS	*	COURT OF APPEAL
LARRY MUNSTER E.J. FAYARD AND C.L. WEBB	*	THIRD CIRCUIT
	*	STATE OF LOUISIANA

****

APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE [NO. 99-2581]
HONORABLE BYRON HEBERT

****

HENRY L. YELVERTON
JUDGE

****

(Court composed of Henry L. Yelverton, Billie Colombaro Woodard and Glenn B. Gremillion, Judges)

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APR 7 2000

AFFIRMED.

YELVERTON, J.

Billy Patin is a horse racing jockey. The defendants, E.J. Fayard, C.L. Webb, and Larry Munster, are horse racing stewards appointed by the Louisiana State Racing Commission. The defendants revoked Patin's racing license. Patin filed a petition for injunctive relief and damages against the stewards. They filed exceptions of no cause of action. The exceptions were granted by the trial court. Patin appeals this judgment claiming that he has stated a cause of action under state law and federal law, specifically 42 U.S.C. § 1983. We affirm.

FACTS

According to Patin's petition, his attorney received a fax on May 27, 1999, around noon which declared that there

would be an administrative hearing regarding his eligibility as a jockey at 5:30 p.m. that same day in the steward's office. Patin's attorney appeared at the hearing to contest the hearing because notice had not been provided in accordance with La.R.S. 49:955 of the Administrative Procedure Act. At the hearing the stewards revoked Patin's jockey license.

On June 1, 1999, Patin filed the present petition for injunctive relief and damages. Patin was granted a temporary restraining order as of May 29, 1999. The temporary restraining order was renewed on June 7, June 17, June 28, and July 7, 1999. The stewards filed motions to dissolve the temporary restraining order and a motion for a protective order and to quash deposition subpoenas. A hearing was held on July 14, 1999, on these motions, including Patin's motion for a preliminary injunction. The stewards had also filed exceptions of no cause of action, no right of action, improper cumulation, lack of subject matter and/or personal jurisdiction, and improper venue. These exceptions were set for hearing on August 23, 1999, but they were taken under consideration by the trial court at the hearing on July 14, 1999.

After a hearing, the trial court ordered that the temporary restraining order be dissolved, denied Patin's request for a preliminary injunction, and denied the stewards' motions to quash deposition subpoenas. The trial court also dismissed Patin's suit for failure to state a cause of action. This appeal by Patin is from the trial court judgment finding that he did not state a cause of action.

DISCUSSION

In his brief Patin has alleged that the stewards have deprived him of his constitutional right of due process in two ways. First, he claims that the stewards violated his right of due process by scheduling a hearing on the revocation of his racing license with only five hours notice and without specifying the charges against him or the basis for their revocation of his license. Second, he claims that the steward's sole reliance on a judgment of the Arkansas State Racing Commission violated his right to due process because that judgment had not been made executory in Louisiana.

The trial court found that Patin had raised procedural due process claims, which could be satisfied by the adequate administrative remedies provided in La.R.S. 4:141 *et seq*. The trial court concluded that the failure to exhaust these remedies precluded Patin from stating a cause of action pursuant to 42 U.S.C. § 1983 and from establishing irreparable injury as grounds for a temporary restraining order and preliminary injunction.

Citing Patsy v. Board of Regents of State of Fla., 457 U.S. 496, 102 S.Ct. 2557 (1982), Patin argues that he is not required to exhaust the state administrative remedies before commencing an action under Section 1983. We agree that *Patsy*, 457 U.S. at 516, 102 S.Ct. at 2568, held that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." However, our analysis does not end there.

In *Zinermon v. Burch*, 494 U.S. 113, 110 S.Ct. 975 (1990), the United States Supreme Court set forth the

complete procedural due process analysis when a state actor deprives a person of a liberty interest. The *Zinermon* plaintiff had been confined to a mental hospital, as a voluntary mental patient, but lacked competency to give informed consent. The court distinguished between substantive and procedural due process violations. Violations of substantive constitutional rights are complete and actionable at the moment the wrongful deprivation occurs, and the existence of state post-deprivation remedies are irrelevant to the litigant's ultimate success. But violations of procedural due process rights are *not* complete when the deprivation occurs; they are not complete "unless and until the State fails to provide due process." *Zinermon*, 494 U.S. at 126, 110 S.Ct. at 983. Unlike violations of substantive rights, the existence of post-deprivation remedies are relevant in a procedural due process claim.

The *Zinermon* analysis explained that if adequate remedies for erroneous deprivations exist under the state statutory or tort law *and* if the unconstitutional deprivation was the random and unauthorized act of state officials (not pursuant to state law), then the state has provided all the process that is due. Hence, no actionable violation of procedural due process has occurred. The *Zinermon* analysis is an extension of the *Parratt-Hudson* doctrine to specifically include deprivations of liberty interests. *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662 (1986) and *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984). Prior to *Zinermon*, the *Parratt-Hudson* doctrine applied to deprivations of property, whether

intentional or negligent, and provided that random, unauthorized deprivations did not violate procedural due process if adequate post-deprivation remedies existed under state law. While the *Zinermon* court expanded the *Parratt-Hudson* doctrine to include deprivations of liberty interests, it limited that doctrine somewhat by refusing to apply it when the state vests in one state actor both the power to deprive the plaintiff of his liberty interest and the power to provide pre-deprivation process. This limitation is not relevant in the present case because it was the racing commission, as neutral decision-maker, who possessed the ultimate power to revoke Patin's jockey license, not the stewards.

Patin's claims are that he was denied procedural due process by the stewards in revoking his jockey's license. Therefore, we will discuss the post-deprivation remedies that were available to Patin.

In *Caracci v. Louisiana State Racing Com'n*, 556 So.2d 1249 (La. 1990), the Louisiana Supreme Court specifically discussed the Rules of Racing. In addition to holding that the actions of stewards do not fall under the definition of "adjudication" so as to require application of the Administrative Procedure Act, the supreme court also held that "[p]ersons adversely affected by a decision of the stewards are afforded due process of law through the procedures set forth in La.R.S. 4:154, and the Rules of Racing." *Id.* In discussing the procedural due process afforded a person who is aggrieved by the actions of the stewards, the supreme court in *Caracci*, 556 So.2d at 1250, (footnote omitted) (bold emphasis supplied) explained:

[A]ny person penalized by the actions of the stewards may apply to the Commission for a suspensive appeal. LAC 35:8301. There is no *right*, however, to a suspensive appeal. Thus, the stewards may decide after a hearing, to suspend or revoke a racing license and/or redistribute purse money, and the person accused may or may not be granted a suspensive appeal. Nonetheless, La.R.S. 4:154(F) provides for a very brief time period within which appeals to the Commission must be decided. Thus any action taken by the stewards may be binding for no more than several days. The time frame set forth in 4:154(F) provides the necessary due process in this situation.

Additionally, La.R.S. 4:154 subjects the Racing Commission to the Administrative Procedure Act (La.R.S. 49:950 et seq.), which provides for certain procedural safeguards in the case of an adjudication. . . .

The legislature has expressed an intent and policy of "safeguarding the people of this state against corrupt, incompetent, dishonest and unprincipled horse racing practices." La.R.S. 4:141. The state's interest in maintaining the integrity of the horse racing industry is sufficient justification for the stewards' authority to impose a penalty

without full blown due process being afforded at that stage of the proceedings. **Their action is subject to immediate review and decision by the Commission on appeal with attendant due process protections.**

Louisiana Administrative Code Chapter 35 §8301 still provides for an appeal of the decision of the stewards to the commission as follows:

> Any person penalized or disciplined by the stewards may apply to the commission for a suspensive appeal staying the effects of the stewards' action pending disposition of such appeal by the commission. All appeals must be filed in writing at the office of the commission within five days of the date of the penalty or imposition of the discipline.

The supreme court has declared that the administrative remedies afforded a person aggrieved by actions of the stewards are adequate and satisfy the requirements of due process. Since Patin failed to take advantage of the adequate post-deprivation remedies, he does not yet have an actionable procedural due process claim. In other words, Patin has not been denied due process yet.

Patin has also argued that the Louisiana Racing Commission does not have the statutory power to adjudicate the constitutionality of its own procedures. However, the constitutionality of the statutory procedures themselves are not at issue. Patin has not claimed that the procedures, when applied properly, are unconstitutional. He claims that the

actions of the stewards were unconstitutional because they did not follow the law and this denied him due process. As stated in *Augustine v. Doe*, 740 F.2d 322, 326 (5 Cir. 1984) (*citing* P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *Hart and Wechshler's The Federal Courts and the Federal System* 236 (Supp. 1981)), "An allegation that a state action has violated an individual's right to procedural due process is thus a condemnation of the procedures that attended the action and not an assessment of the constitutionality of the action itself."

For the above reasons we find that the trial court correctly granted the stewards' exceptions of no cause of action. Costs of this appeal are assessed to Billy Patin.

AFFIRMED.

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NOTICE OF JUDGMENT:

Judgment on Rehearing
rendered May 24, 2000

REHEARING ACTION: May 24, 2000

Docket Number: 99 01739-CA

BILLY PATIN
VERSUS
LARRY MUNSTER ET AL

Appealed from Lafayette Parish Case No. 992581

BEFORE JUDGES:

Hon. Henry L. Yelverton
Hon. Billie Colombaro Woodard
Hon. Glenn B. Gremillion

As counsel of record in the caption case, you are hereby notified that the application for rehearing filed by Billy Patin has this day been

DENIED.

FOR THE COURT

Kenneth J. deBlanc
Clerk of Court

cc:

John William Kolwe, Counsel for the Appellee
Kim Raines Chatelain, Counsel for Appellee

MAY 25 2000

The Supreme Court of the State of Louisiana

BILLY PATIN

VS. NO. 2000-C-1916

LARRY MUNSTER E.J. FAYARD AND C.L. WEBB

- - - - - - - - - - - - -

IN RE: Patin, Billy; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Lafayette, 15th Judicial District Court Div. C, Nos. 99-2581; to the Court of Appeal, Third Circuit, No. 99-1739

- - - - - - - - - - - - -

September 29, 2000

Denied.

PFC
HTL
CDK
BJJ
JPV
CDT
JTK

Supreme Court of Louisiana
September 29, 2000
s/_____
Deputy Clerk of Court
For the Court

OCT 2 2000

(2)

Supreme Court, U.S.
FILED

MAR 28 2001

OFFICE OF THE CLERK

No. 00-1067

In The Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E. J. FAYARD, and C. L.WEBB,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

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PETITIONER'S REPLY BRIEF

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ARGUMENT

Respondents skillfully, but in the end ineffectively, attempts to recast Petitioner's claim below. It bears repeating that Petitioner's license was revoked not because of anything he is alleged to have done in Louisiana. Instead, his license was revoked based on acts he is alleged to have committed in Arkansas. Had the issue been his entitlement to a racing license in Louisiana in the first instance, then the statutory authority cited by Respondent, La. R.S.A. § 4:150(B), might be of some persuasive effect. Having been awarded a license, the Louisiana Racing Commission may not deprive a licensee of his license simply by submission of some hearsay evidence of his suspension elsewhere. To have done so necessarily required that the administrative determination of the Arkansas Racing Commission be given conclusive effect in Louisiana, without Petitioner's having had a realistic opportunity to contest it.

To its credit, Respondents acknowledge that Petitioner has a substantial property right in his jockey's license, of which he may not be deprived without due process of law. *Barry v. Barchi*, 433 U.S. 55 (1979). Respondents sidestep the issue of whether Petitioner has been deprived of a substantive right protected by the Fourteenth Amendment by characterizing his claim as one exclusively for a denial of procedural due process. Respondent, in effect, is arguing the long-discredited theory that a claim under 42 U.S.C. § 1983 is barred by failure to exhaust administrative remedies.

The question whether exhaustion of administrative remedies should ever be required in a § 1983 action has prompted vigorous debate and disagreement. . . . Our resolution of this issue, however, is made much easier because we are not writing on a clean slate. This Court has addressed this issue, as well as related issues, on several prior occasions.

Respondents suggest that our prior precedents do not control our decision today, arguing that these cases can be distinguished on their facts or that this Court did not "fully" consider the question whether exhaustion should be required. This contention need not detain us long. Beginning with *McNeese v. Board of Education*, 373 U.S. 668, 671-673 (1963), we have on numerous occasions rejected the argument that a § 1983 action should be dismissed where the plaintiff has not exhausted state administrative remedies. *See Barry v. Barchi*, 443 U.S. 55, 63, n. 10 (1979); *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973); *Carter v. Stanton*, 405 U.S. 669, 671 (1972); *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *King v. Smith*, 392 U.S. 309, 312, n. 4 (1968); *Damico v. California*, 389 U.S. 416 (1967). *Cf. Steffel v. Thompson*, 415 U.S. 452, 472-473 (1974)

> ("When federal claims are premised on [§ 1983]—as they are here—we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights"). Respondents may be correct in arguing that several of these decisions could have been based on traditional exceptions to the exhaustion doctrine. Nevertheless, this Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983, and we have not deviated from that position in the 19 years since *McNeese*.

Patsy v. Board of Regents of the State of Florida, 457 U.S. 496, 500-01 (1982) (citations omitted).

Here, of course, Petitioner claims that he was denied a substantial property interest—his racing license—without having had a meaningful opportunity to challenge that deprivation. Respondent, rather than grappling with that issue, dismisses it, arguing that the real deprivation of which Petitioner complains could only have been committed by the Louisiana Racing Commission, not the stewards, even though as a result of the stewards' action, Petitioner could not race in Louisiana. His "hearing" to challenge that deprivation was held on a few hours' (not days, but hours) notice. At that hearing, his license was revoked, not suspended, based solely on an unconfirmed determination by the racing commission in another state.

Respondents argue that it is enough that Petitioner could hope to have the actions of the stewards undone by the Racing Commission at some indeterminate time in the future. The review procedure that Respondents claim was adequate would have compelled Petitioner to challenge an out-of-state administrative determination that had already been given conclusive effect by the racing stewards. The presumption that should attach to every licensee—that he should be entitled to retain his license until facts are proven that warrant revoking it—in this case was precisely reversed. Instead, Petitioner was placed in the position of having to refute a decision already made on the basis of another's state's administrative determination.

Respondents' position simply dismisses Petitioner's claim of a substantive due process deprivation, maintaining that this case is simply one of a deprivation of procedural due process. To be sure, a procedural due process deprivation did occur here. Of much more significance to this Court's deliberations, however, is the substantial *substantive* due process right of which Petitioner was deprived. Simply ignoring that deprivation, which is the choice offered by the Respondents, simply will not do. To vindicate Petitioner's substantive due process deprivation, the Court must grant the petition in this case. Although *Barry v. Barchi* informs the property interest to be protected here, it does not control the outcome.

That the Racing Commission would confirm the revocation of Petitioner's racing license is preordained by the posture in which his case left the racing stewards, regardless of

what appellate procedural review was afforded him. The promptness, even the availability of that review is not what is at issue here. Much less is it relevant that he did not exhaust his administrative remedies, as the Court has made clear so often in the past. Before the administrative determination by the racing commission in Arkansas could be given preclusive effect by the Louisiana racing stewards, the Louisiana statutory procedure for confirming foreign judgments must have been followed. That Respondents failed to do so deprived Petitioner of a right conferred on all other Louisiana citizens. That right can be vindicated only by granting Petitioner the right to a trial in Louisiana state court. It is for that opportunity that Petitioner looks to this Court, and nothing more.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that a writ of certiorari issue to the Supreme Court of the State of Louisiana in this case and that, after full briefing and argument, this Court reverse the judgment of the Court of Appeal of Louisiana and direct that the case be remanded to the Circuit Court for the Parish of Lafayette for trial.

Respectfully submitted,

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Supreme Court, U.S.
FILED
MAR 2 2001
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No. 00-1067

In The

Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E.J. FAYARD and C.L. WEBB,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

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REASONS FOR DENYING WRIT

This court should deny the petition for *writ of certiorari* because neither the Louisiana Supreme Court nor the Louisiana Third Circuit Court of Appeal decided any important question of federal law in a way that conflicts with relevant decisions of this Honorable Court.

STATEMENT OF THE CASE

1. Introduction to Facts

This is an action brought by an individual licensed as a jockey by the Louisiana State Racing Commission (the "Racing Commission") to participate in horse racing for parimutuel wagering.

The Racing Commission is charged by statute with the authority and responsibility to encourage forceful and honest statewide horse racing in Louisiana through licensing of, among others, racetracks, horse owners, trainers and jockeys. The Racing Commission is comprised of nine gubernatorial appointees who serve without compensation.[1]

Though this action arises from a license granted by the Racing Commission, the action is brought against neither the Racing Commission nor any of its commissioners. The suit is brought against three individuals for actions taken in their official capacity as racing stewards.

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[1] La. Rev. Stat. Ann. §§ 4:147 and 4:148. A copy of the relevant state statutes has been reproduced for the Court's convenience and attached hereto as ***Appendix A***.

Racing stewards are an enforcement arm of the Racing Commission. They police the daily conduct of racing at each racetrack by ensuring participants licensed by the Racing Commission comply with all applicable laws and regulations pertaining to racing. There are three stewards approved by the Racing Commission assigned to each of the four racetracks in Louisiana during a racing meet. The racing stewards' duties and responsibilities are, like the Racing Commission, prescribed by law.[2]

The law controlling horse racing and racing licenses within Louisiana is found in Title 4, Chapter 4 of the Louisiana Revised Statutes of which Part 1 contains the provisions for licensing individuals, as opposed to licensing racetrack associations. Section 150 sets out the requirements and qualifications for licensing of owners, trainers, jockeys and riders.[3]

Section 150(B)(3) mandates that a licensee approved by the Racing Commission must not have "violated any law, rule, or regulation, with respect to racing in *this or any other jurisdiction or any rule, regulation, or order of the commission . . .* " (emphasis supplied). Section 150(B)(12) further provides that the applicant must be in good standing in all racing jurisdictions.

The grounds for denial or termination of racing privileges granted by the Racing Commission are set forth in La. Rev. Stat. Ann. § 4:152. It provides that just cause for the termination of racing privileges occurs when a licensee loses or is unable to meet the qualifications and

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[2] ***Appendix A***, La. Rev. Stat. Ann. § 4:172.

[3] See ***Appendix A***.

conditions for a license as set forth in Section 150(B). Thus, a jockey currently licensed in Louisiana is subject to having the license revoked if his status in another state racing jurisdiction is changed to "bad standing", i.e., ineligible to participate in racing.

2. Statement of Facts

This matter begins with the running of the Arkansas Derby at Oaklawn Park on April 10, 1999. The thoroughbred, VALHOL, owned by James Jackson, ran in the prestigious race. Billy Patin was the jockey.

VALHOL won the race by four-and-half lengths. However, immediately following the derby, officials at Oaklawn Park discovered a "battery" on the racecourse. A battery, as it is commonly referred, is a small electrical device that affects the horse's performance when used to shock the horse during a race and can affect the outcome of a race.

Possession of a battery is against the rules of racing in Arkansas. Possession of a battery on a racetrack in Louisiana licensed by the Racing Commission is both a violation of the rules of racing and a felony.[4]

A review of the race by Arkansas racing stewards captured on video led to the finding that Patin was in possession of an electrical device while riding VALHOL in the Arkansas Derby. VALHOL was disqualified as first place finisher, and Billy Patin's license was revoked.

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[4] ***Appendix A***, La. Rev. Stat. Ann. § 4:175.

The owner, James Jackson, appealed the disqualification of VALHOL to the Arkansas Racing Commission who upheld the stewards' finding that Patin was in possession of an electrical device. The final decision of the Arkansas Racing Commission was appealed by James Jackson to Arkansas district court and ultimately to the Arkansas Supreme Court. The Arkansas Supreme Court affirmed the decision of the lower court and that of the Arkansas Racing Commission finding there was sufficient evidence and justification for the disqualification of VALHOL.[5]

There is no record of a similar appeal or proceeding challenging or enjoining the revocation of Billy Patin's Arkansas Racing license. Revoked in Arkansas, Billy Patin returned to Louisiana to jockey.

Having received notice that Billy Patin was in bad standing in Arkansas, vis a vis the revocation of his license, the racing stewards of Evangeline Downs racetrack in Louisiana ordered Billy Patin to report to them regarding his continued eligibility for licensing in Louisiana.

Billy Patin appeared at the stewards' hearing with an attorney but refused to participate or provide information relevant to his apparent ineligibility under La. Rev. Stat. Ann. § 4:150(12).

At the conclusion of the hearing, the racing stewards withdrew Billy Patin's Louisiana 1998/1999 jockey license

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[5] ***Appendix C***, *Jackson v. Arkansas Racing Commission*, 2001 WL 32198, No. 00-435 (Ak. 1/11/2001).

upon finding he was ineligible to race under Louisiana law since he was "currently suspended in Arkansas".[6]

3. Procedural History

On June 1, 1999, Billy Patin filed an "Original Petition for Injunctive Relief and Damages" in the Louisiana Fifteenth Judicial District Court for the Parish of Lafayette against the three racing stewards individually challenging the ruling to withdraw his jockey license.[7]

Defendants excepted to the petition that plaintiff had no cause or right of action against the racing stewards in that the final authority to grant, suspend or withdraw a license lied with the Racing Commission and that plaintiff failed to exhaust administrative remedies before the Racing Commission prior to instituting suit.

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[6] The ruling of the stewards read as follows:

> The 1998/99 Jockey license issued to BILLY PATIN is hereby withdrawn. (currently suspended in Arkansas)
>
> IN ACCORDANCE WITH LAC OR LRS 4:150 LICENSE TO OWNERS, TRAINERS, JOCKEYS, AND RIDERS, QUALIFICATIONS OF APPLICANT 4:152 GROUNDS FOR DENIAL OR TERMINATION OF RACING PRIVILEGES – OTHER THAN ASSOCIATIONS

[7] In connection with filing the petition, Billy Patin sought injunctive relief enjoining the enforcement of the racing stewards' decision to withdraw the license pending the outcome of the litigation. A temporary restraining order was granted. See ***Appendix B***. The license at issue expired by operation of law on June 30, 1999 while a temporary restraining order was still in effect. See ***Appendix A***, La. Rev. Stat. 4:169.

When the matter came for hearing, the trial court summarily dismissed the petition because under state law plaintiff failed to exhaust available administrative remedies and under federal law he had not stated a claim pursuant to 42 U.S.C.A. § 1983.

Billy Patin appealed the dismissal of his suit to the Louisiana Third Circuit Court of Appeal. The court of appeal affirmed the trial court with a written decision, and the Louisiana Supreme Court denied Billy Patin's writ application.[8]

Billy Patin has now applied to this Honorable Court for review.

ARGUMENT

Billy Patin comes before the Supreme Court complaining he was denied substantial recourse to redress the suspension of his jockey license when his petition for injunction and damages filed in Louisiana state court was dismissed.

Petitioner's property interest in his racing license is recognized by Louisiana's substantive and procedural law which already provides adequate protections under standards articulated by this Court.[9]

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[8] ***Pet. Appendix*** A-7, A-18.

[9] *Zinermon, et al. v. Burch*, 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed.2d 100 (1989); *Barry v. Barchi*, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1978).

The state statutes which create the property interest at issue, the jockey license, specifically provide not only for a pre-deprivation hearing but a right of prompt review by post-deprivation hearing with all attendant due process.

Billy Patin was afforded a pre-deprivation hearing, and his license was not withdrawn by the racing stewards until after he had an actual opportunity to appear with benefit of his counsel and offer a defense.

From the racing stewards' ruling, Billy Patin had five (5) days under state law to appeal for a trial *de novo* before the Racing Commission whose final regulatory authority it is to grant, refuse or suspend a racing license.

Proceedings before the Racing Commission are governed by the Louisiana Administrative Procedure Act which not only ensures due process before the agency but specifically provides for further review by a Louisiana state court.[10]

This opposition will begin by examining Billy Patin's plea for the jurisdiction of the Supreme Court under 42 U.S.C.A. § 1257.

Next, the opposition will look at the specific allegations pled in the original petition. Though petitioner challenges the dismissal of the suit on application to the Supreme Court, he does not provide the petition for the Court's review. Thus, respondent has attached it hereto as

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[10] ***Appendix A***, La. Rev. Stat. Ann. § 4:154 and La. Rev. Stat. §§ 49:955 and 964.

Appendix B for the Court's ready reference as the allegations contained therein are discussed in this opposition.

Finally, the opposition will focus on the state court remedies available to petitioner which comport with the due process standards previously articulated by the Supreme Court.

1. Question Of Federal Jurisdiction Under 28 U.S.C.A. § 1257

Patin pleads the jurisdiction of the United States Supreme Court under 28 U.S.C.A. § 1257.

28 U.S.C.A. § 1257 provides for review by the Supreme Court on *writ of certiorari* of the highest court of a state for any one of three reasons:

(1) the validity of a treaty or statute of the United States is drawn in question, or

(2) where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or

(3) where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treatises or statutes of, or any commission held or authority exercised under, the United States.

In order to invoke jurisdiction, there must be both a federal question raised and decided by the highest state

court.[11] The Supreme Court does not exercise supervisory jurisdiction over state courts and is confined to evaluating a state court judgment on review in relation to the Federal Constitution.[12]

Underscoring this litigation is the application of a state statute which mandates that individuals possessing or applying for a license to participate in horse racing in Louisiana must *"not be in bad standing in any jurisdiction"* and must not have "violated any law, rule or regulation, with respect to racing in [Louisiana] or any other state."[13]

The litigation began with filing a petition in a Louisiana state court based on a state law claim that the racing stewards (1) failed to comply with the process set forth by the Administrative Procedure Act before depriving Billy Patin of his license and/or (2) that the stewards failed to comply with the process set forth in the Louisiana Code of Civil Procedure.[14]

The constitutionality of the state statute underscoring this litigation and the adequacy of administrative remedies provided by state law are not before this Court.

Applying these state laws, the Louisiana intermediate appellate court properly affirmed the lower court finding that Billy Patin cannot state cause of action unless

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[11] *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 96 S.Ct. 2358, 49 L.Ed.2d. 132 (1976).

[12] *Chandler v. Florida*, 449 U.S. 560, 101 S.Ct. 802, 66 L.Ed.2d 740 (1981).

[13] ***Appendix A***, La. Rev. Stat. Ann. § 4:150(B)(3) and (12).

[14] ***Appendix B***, Original Petition for Injunctive Relief and Damages.

and until he has exhausted available administrative remedies.[15]

Although the original petition did not expressly seek redress under 42 U.S.C.A. § 1983, the Louisiana courts nevertheless considered Billy Patin's arguments asserting the claim.[16]

It is only in this limited context that the litigation bears any relation to the Federal Constitution.

Relying upon *Zinermon, supra,* the Louisiana Third Circuit Court of Appeal concluded that Billy Patin had not stated a cause of action for deprivation by a state actor of a federally protected right without due process of law in light of available substantive and procedural protections provided by Louisiana state law.

2. Petitioner Does Not State A Cause Of Action for the Denial of Substantive Or Procedural Due Process

This opposition now turns to the allegations stated in original petition which Billy Patin contends was improvidently dismissed by state court for failing to state a cause of action.[17]

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[15] ***Appendix A,*** La. Rev. Stat. Ann. § 4:154 and 49:964; *Caracci v. Louisiana State Racing Comm'n,* 556 So.2d 1249 (La. 1990).

[16] ***Appendix B,*** Original Petition for Injunction and Damages; ***Pet. Appendix*** A-5 and A-12.

[17] An exception of no cause of action under Louisiana law is not the same as a motion to dismiss under the Federal Rules of

For purposes of review, the factual allegations in the original petition are accepted as true:

a. Billy Patin is a jockey licensed by the Commission to race horses in the State of Louisiana for the 1998/1999 racing season, which he engages in as a means of earning a living. (***Appendix B***, Pet. ¶ 1)

b. Defendants are stewards appointed by the Louisiana State Racing Commission. (***Appendix B***, Pet. ¶ 2)

c. Billy Patin's attorney, Minos Simon, received a facsimile transmission at noon time of a "notice of hearing" to be held that day at 5:30 p.m. (***Appendix B***, Pet. ¶ 3)

d. Billy Patin, with counsel, appeared at the hearing and objected to the notice of hearing that it did not comport with the Louisiana Administrative Procedure Act. (***Appendix B***, Pet. ¶ 5-6)

e. On entering this objection, Billy Patin and his attorney "refused to participate in any hearing and withdrew from said noticed adjudication." (***Appendix B***, ¶ 7)

Civil Procedure. Federal rules require only notice pleading though the notice must include a short plain statement of the claim showing that the pleader is entitled to relief. Fed. Rul. Civ. Proc. 8, 28 U.S.C.A.. A complaint filed in Louisiana state court must contain a short, clear and concise statement of all causes of action arising out of, and of the *material facts* of the transaction or occurrence that is the subject matter of the litigation. La. Civ. Pro. art. 891.

f. The stewards withdrew Billy Patin's license issued for the 1998/1999 racing season. (***Appendix B***, ¶ 8)

g. Billy Patin believes that the stewards withdrew the license based upon an Arkansas Racing Commission ruling suspending his license. (***Appendix B***, ¶ 9).

Construing these facts most favorable to petitioner, the threshold inquiry is whether a cause of action has been stated under 42 U.S.C.A. § 1983.

The petition does not challenge the revocation of the license as a violation of any specific guarantee of the Bill of Rights, and it does not challenge the adequacy of the available state law remedies. Therefore, the complaint does not present any substantive issues of due process.[18]

Petitioner has alleged that he was deprived of his racing license and, arguably though inartfully, that the deprivation was the conduct of persons acting under the color of state law. Still, the petition does not state any material facts upon which to base a cause of action that the deprivation was without due process. To the contrary, the petition acknowledges that the deprivation did not occur until after he was offered a pre-deprivation hearing.

The only remaining issue is, therefore, whether the due process provided to Billy Patin was sufficient under the standards articulated by this Court.

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[18] *Zinermon v. Burch*, 494 U.S. 113, 110 S.Ct. 975 (1990).

3. Petitioner Was Provided Due Process Under *Zinermon* and *Barry*

Though the availability of state law remedies is not relevant to a claim under 42 U.S.C.A. § 1983 for violations of substantive due process, it is relevant to a claim of procedural due process.[19]

To avoid the relevancy of available state law remedies guaranteeing due process under Louisiana law, petitioner attempts to morph a claim which is at best one for procedural due process to one of substantive due process citing this Court's decision in *Zinermon*. However, like the petitioner in *Zinermon*, Billy Patin did not frame the action as one of substantive due process.

Endeavoring to state a claim of substantive due process, Billy Patin criticizes the revocation of his license by the racing stewards "giving effect to an adjudication rendered in another state without giving it domestic effect under Louisiana law."[20]

This claim is fatally flawed because the racing stewards did not give effect to an adjudication of another state. The racing stewards gave effect to Louisiana law which requires that one who possesses a racing license issued in Louisiana by the Racing Commission must not be in bad standing, i.e., ineligible to participate in racing, in any other state racing jurisdiction.[21]

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[19] *Zinermon*, 494 U.S. at 126.

[20] ***Petition***, p. 21.

[21] ***Appendix A***, La. Rev. Stat. § 4:150(B)(12).

The constitutionality of the state statute which is the basis of the revocation is not challenged here and neither is the state law procedures in place to review it.

Hence, the existence of state remedies is relevant to the issue of due process as presented. In a procedural due process claim, the deprivation by state action of a constitutionally protected interest, i.e., a property interest, is not in itself unconstitutional. What is unconstitutional is the deprivation of the interest without due process of law.[22]

Billy Patin was not deprived of his jockey license without due process of law.

Under Louisiana law, petitioner had five (5) days from the pre-deprivation hearing of the racing stewards to challenge the revocation of his license by applying for a post-deprivation hearing before the Racing Commission via administrative appeal.

Upon receipt of a timely appeal, the Racing Commission is obliged to conduct a contradictory hearing, *de novo*, within *ten (10) days* of filing the appeal or suspend the revocation of the license until a hearing can be held. A final decision of the Racing Commission must thereafter be rendered within *forty-eight (48) hours* of the hearing.[23] Post-deprivation hearings before the Racing

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[22] *Zinermon*, 494 U.S. at 125.

[23] ***Appendix A***, La. Rev. Stat. Ann. § 4:154. Any person aggrieved by a final agency decision of the Racing Commission is entitled to judicial review by filing a petition in state district court within thirty days of mailing of the decision. The filing of the petition does not itself stay the decision, but the reviewing court may order a stay *ex parte*. La. Rev. Stat. § 49:955. Thereafter, either party may obtain further review on petition

Commission are conducted with all attendant due process including reasonable notice and opportunity to hear, be heard and present evidence.[24]

The Supreme Court poignantly recognized in *Barry v. Barchi* the important state interest in assuring the integrity of horse racing carried on under its auspices. *Barry* involved an action by a licensed horse trainer of the New York State Racing Commission and Wagering Board who challenged the constitutionality of a statute authorizing the summary suspension of his racing license *without* a prompt post-suspension hearing.[25] The board of stewards summarily suspended Barry's license upon receipt of a post race urinalysis revealing a horse trained by him tested positive for a prohibited substance in violation of the rules of racing. Barry did not avail himself of the procedures for a post-suspension hearing, but challenged the inadequacy of the remedy under the Fourteenth Amendment in federal district court.

Here, the Supreme Court held that a state is entitled to impose an interim suspension of a racing license where ever there is probable cause pending a prompt judicial or administrative hearing that would definitely determine the issues. The court noted that in such circumstances the State's interest in preserving the integrity of the sport becomes most acute.[26]

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for appeal from the district court to the appellate courts. La. Rev. Stat. Ann. § 49:965.

[24] ***Appendix A***, La. Rev. Stat. Ann. § 49:955, see also La. Rev. Stat. Ann. § 49:961.

[25] *Barry v. Barchi*, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979).

[26] *Id.*

The Supreme Court upheld the constitutionality of the statute in *Barry* allowing for the summary suspension of the trainer's license though it found the suspension constitutionality infirm because the statute did not provide for a prompt post-suspension hearing.[27]

Louisiana's substantive and procedural law afforded Billy Patin all the due process that was owed to him under *Barry*. Though the hearing before the racing stewards resulted in the deprivation of his racing license, state law *limited* the efficacy of the stewards' action to ten days from the time Billy Patin appealed the decision.

Petitioner cites *Benoit v. La. State Racing Comm'n*, 576 So.2d 578 (La. Ct. App. 4th Cir. 1991) for the proposition that he was denied due process because he was not given proper notice of the hearing before the racing stewards.[28] However, the notice at issue in *Benoit* was the notice of a Racing Commission hearing not a racing stewards' hearing. There, the case was remanded from the appellate court back to the Racing Commission upon finding that the notice to appear before the Racing Commission contained an incorrect citation of the violation rendering the notice ineffective under the Administrative Procedure Act.

Proceedings before the racing stewards are not governed by the Louisiana Administrative Procedure Act. The Louisiana Supreme Court has twice held that the decisions of racing stewards are not final agency decisions but merely a pre-deprivation hearing subject to a subsequent adjudication with all attendant due process

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[27] *Id.*

[28] ***Petition***, p. 10.

before the Racing Commission. Like the *Barry* Court, the Louisiana Supreme Court recognizes the important state interest in maintaining the integrity of horse racing which it holds to be sufficient justification for racing stewards to impose an interim suspension of a license without full blown due process being afforded at that stage.[29]

Billy Patin was deprived of his jockey license, but he was not deprived of it without due process. He comes before the Supreme Court asking it to require Louisiana provide him all the substantive notice and evidentiary requirements for a post-deprivation hearing at the pre-deprivation hearing stage.

It is well settled that each state must legislate and regulate the professions within the state in order to protect against injurious practices occurring therein. The United States Constitution and its safeguards will not be construed so broadly as to hamper a state's ability to do so.

Louisiana's pre-deprivation and post-deprivation procedures established by state law for the regulation of racing licenses comports with the standards of due process already articulated by this Court.[30]

Petitioner's application does not present any new or important federal question to be decided.

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[29] *Caracci v. La. State Racing Comm'n*, 556 So.2d 1249 (La. 1990); *Sider v. La. State Racing Comm'n*, 451 So.2d 1265 (La. 1984).

[30] *N. Dakota State Bd. Of Pharmacy v. Syder's Drug Stores, Inc.*, 414 U.S. 156, 94 S.Ct. 407 (1973).

CONCLUSION

Petitioner was not deprived of his jockey license without due process. He was afforded all due process but he elected not to exercise the due process rights guaranteed to him under state law. First, he abandoned the pre-deprivation hearing refusing to participate. Then, he failed to appeal the withdrawal of his license to the authority who granted it to him, the Racing Commission.

Because Billy Patin was not deprived of his property interest without due process of law under the standards set forth in *Zinermon* and *Barry*, he cannot state a cause of action under 42 U.S.C.A. § 1983 and his petition was properly dismissed.

Respectfully submitted,

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APPENDIX A

Appendix A reproduces only in pertinent part some of the Louisiana statutes which are relevant to the petition for writ application before the court.

Included are pertinent parts of the following Louisiana Revised Statutes:

(1) Title 4, Chapter 4 related to Horse Racing;

(2) Title 49, State Administration, the "Louisiana Administrative Procedure Act."

LOUISIANA REVISED STATUTES
TITLE 4. AMUSEMENTS AND SPORTS
CHAPTER 4. RACING
PART I. HORSE RACING

§ 141. Legislative intent and policy

A. It is the policy of the state of Louisiana in furtherance of its responsibility to provide revenues for the operation of state government for its people, to acknowledge and declare that the providing of funds and financial assistance to licensed horse racing tracks in the state of Louisiana constitutes an authorized public function and purpose of the state of Louisiana, to encourage forceful and honest statewide control of horse racing for the public health, safety, and welfare by safeguarding the people of this state against corrupt, incompetent, dishonest and unprincipled horse racing practices;

(1) To institute and maintain a program to encourage and permit development of the business of horse racing with pari-mutuel wagering thereon on a high plane.

(2) To institute and maintain a program to encourage and permit development of the breeding and ownership of race horses in the state.

(3) To institute and maintain a regulatory program for the business of racing horses, which program assures the protection of public health, safety and welfare, vesting with the commission forceful statewide control of horse racing with full powers to prescribe rules and regulations and conditions under which all horse racing is conducted with wagering upon the result thereof with the state.

(4) To institute and maintain a program to provide financial assistance that will encourage and permit the development of the business of horse racing by licensed horse racing tracks in the state of Louisiana.

(5) To institute and provide a program for the regulation, ownership, possession, licensing, keeping, and inoculation of animals on premises under its control and supervision not inconsistent with the rules and regulations of the state livestock and sanitary board.

B. This Chapter is an exercise of the police powers of the state to promote the public health, safety and welfare.

* * *

§ 144. State Racing Commission; creation; membership; tenure; powers and duties; quorum; qualification of members; per diem; expenses and disbursements; bond

A. There is hereby created in the executive branch of state government a racing commission, to be known as

the "Louisiana State Racing Commission". The commission shall have the powers and duties specified in this Part and all other powers necessary and proper to enable it to execute fully and effectually all of the objects, purposes, duties, and policies of this Part. It shall be composed of ten persons appointed by the governor, one appointed from each congressional district and two appointed at large. Each appointment by the governor shall be submitted to the Senate for confirmation. The governor shall select one member of the commission to serve as chairman. The commission shall select from among its membership a vice chairman and a second vice chairman for two year terms. Each member shall serve at the pleasure of the governor. A majority of the members shall constitute a quorum for the transaction of any business or the exercise of any power.

(*Paragraphs B and C not reproduced*)

* * *

§ 145.1. Exclusive venue for law suits against the commission

The commission may be sued only in the city of New Orleans, parish of Orleans.

* * *

§ 147. Specific duties of commission

The commission shall carry out the provisions of this Part, including the following specific duties:

(1) To set the dates during which any race meetings may be conducted in this state, including dates which limit racing at particular tracks for quarter horses only, provided that:

(a) it shall prohibit the conducting of any thoroughbred race meetings having the same or overlapping dates for such race meetings at thoroughbred race tracks within a radius of 100 miles of each other; and

(b) it shall prohibit the conducting of any exclusively quarter horse race meetings having the same or overlapping dates for such race meetings at any other exclusively quarter horse track within a radius of 100 miles of each other. However, nothing herein shall prevent presently licensed and existing tracks from conducting quarter horse races with any exclusive quarter horse track having the same or overlapping dates for race meetings.

(2) The commission shall appoint three stewards to serve each day of each race meeting conducted under the provisions of this Part. One of the stewards shall be appointed by the commission to represent the Louisiana State Racing Commission, shall be designated as the state steward and shall have resided in the state for a period of not less than five years immediately preceding the date of his appointment as such. The amount to be paid by the commission to the state steward as compensation for his services shall be at least the same amount paid to the two stewards appointed to represent an association and the association shall reimburse the commission in an amount equal to the amount paid by it to the state steward as his compensation, as aforesaid, which amount shall be considered an additional fee due the state by an association for the privileges granted in its license.

Two of the stewards shall be nominated by the association conducting a race meeting under the provisions of this Part and, prior to serving as such, shall be approved and appointed by the commission. The amounts to be

paid these two stewards as compensation for their services shall be paid by the association nominating them, which amounts shall also be considered an additional fee due the state by an association for the privileges granted in its license.

The commission may appoint other stewards to be compensated by it and assign to each such duties as are consistent with this Part; provided, however, that such other stewards shall not serve as a steward in the stewards stand during any race meeting conducted under the provisions of this Part, except with the written consent of the association conducting such race meeting.

The commission shall be required to show just cause for not appointing any racing official submitted to it for its approval.

(3) To make an annual report to the governor of its operation, its own actions and rulings, and the receipts derived under the provisions of this Part; and to offer such practical suggestions as it deems proper to accomplish more fully the purposes of this Part.

(4) To require of each applicant seeking a license to operate a race meeting an application setting forth:

(a) The full name of the person, and if a corporation the name of the state under which it is incorporated, and the names of the corporation's agents for the service of process within Louisiana.

(b) If an association or corporation, the names of the stockholders and directors of the corporation or the names of the members of the association.

(c) The exact location where it is desired to conduct or hold a racing meet.

(d) Whether or not the racing plant is owned or leased, and if leased the name and address of the owner, or if the owner is a corporation, the names of its directors and shareholders. However, nothing in this Part prevents any person from applying to the commission for a permit to conduct races where the racing plant has not yet been constructed.

(e) A statement of the assets and liabilities of the person applying for a license.

(f) The kind of racing to be conducted and the dates requested.

(g) Such other information as the commission may require.

(5) To require an oath of every applicant, by the person or executive officer of the association or corporation, stating that the information contained in the application is true.

(6) To make rules and regulations for the holding, conducting, and operating of all race tracks, race meets, and races held in Louisiana, provided such regulations are uniform in their application and effect.

§ 148. Rules, regulations and conditions

The commission shall make rules, regulations and conditions for the holding, conducting and operating of all race tracks, race meets and races held in this state and for the conduct of the racing industry of this state under

this Part. Special rules, regulations and conditions may be promulgated separately for thoroughbred racing and for quarter horse racing. Said rules, regulations and conditions shall be consistent with this Part and provide for and deal with all matters necessary to the holding of such race meetings.

* * *

§ 150. Licenses to owners, trainers, jockeys, and riders; qualifications of applicant for a license

A. The Commission may grant, refuse, suspend, or withdraw licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise boys, veterinarians, valets, platers, and/or anyone licensed pursuant to this Part and any rules and regulations the Commission adopts and upon the payment of a license fee as fixed pursuant to this Part. No license under this section shall be granted for more than one fiscal year, but a license issued pursuant to this Part is valid at all race meetings in the state during the period. Any license may be revoked by the commission and any person whose license has been revoked is ineligible to participate in racing unless the license is returned by the commission with permission to operate thereunder. No license shall be refused to any applicant who is qualified in accordance with the rules and regulations adopted by the commission; and no license shall be revoked without just cause.

The granting of a license to a trainer shall make him responsible for and be the absolute insurer of the condition of the horses he enters regardless of acts of third parties.

B. Applicants for a license under this Section shall meet the following qualifications and conditions:

(1) Is a person of good character and reputation and meets the age requirements for the particular license as set forth in the Rules of Racing.

(2) Has not been convicted of a felony under the laws of the United States, the state of Louisiana, or any other state or country; provided, however, that the commission may, at its discretion, issue or renew a license, where the applicant or licensee has maintained a good record and evidenced honest character from the date of expiration of sentence, and for good cause shown.

(3) Has not, nor has his partner, agent, employee or associate knowingly associated or consorted with any person or persons who have been convicted of a felony in any jurisdiction or jurisdictions or is knowingly consorting or associating with bookmakers, touts, or persons of similar pursuits or has himself engaged in similar pursuits or has been found guilty of any fraud or misrepresentation in connection with racing, breeding, or otherwise or has violated any law, rule, or regulation, with respect to racing in this or any other jurisdiction or any rule, regulation, or order of the commission, or has been guilty or engaged in similar related or like practices, provided, however, that the commission may issue or renew a license or refuse to suspend or revoke a license issued, where the applicant or licensee has not engaged in such association or activities for a period of ten years or for good cause shown.

(4) Is financially responsible.

(5) Possesses the required experience and knowledge required for the particular license applied for as set forth in the Rules of Racing.

(6) Repealed by Acts 1992, No. 281, § 2, eff. June 11, 1992.

(7) Fully complies with the form requirements printed by the racing commission.

(8) Is physically fit.

(9) Has not been convicted of violating any municipal or parish ordinances adopted pursuant to the provisions of the chapter. If the applicant has been so convicted, the granting of a license is within the discretion of the racing commission.

(10) Is not the spouse of a person whose application has been denied or whose license has been revoked, unless judicially separated or divorced.

(11) Certifies that he has read or has had read to him the rules of racing and agrees to abide by these rules, and further certifies under written oath that all of the information on the application for license is true and correct.

(12) Is not in bad standing in any racing jurisdiction.

C. An applicant for licensure as a jockey, apprentice jockey, exercise person, groom, or hot walker must be at least sixteen years of age.

D. Owners, trainers, and jockeys licensed pursuant to this Section shall be admitted without charge to all racing facilities and offtrack wagering facilities.

* * *

§ 151. Criteria for racing privileges other than associations

In the exercise of its authority in considering racing privileges the commission should follow the following criteria, standards and guidelines by way of illustration without limitation:

(1) The public interest.

(2) Misuse of license, permit or privilege by the licensee.

(3) Misstatement or falsification of, or concerning, application for license.

(4) The moral and financial standing of licensee or its officers, partners, agents or officials.

(5) Failure to comply with statutory requirements or the rules, regulations and orders of the commission.

(6) Dereliction of duty and/or responsibilities.

(7) Business failure.

§ 152. Grounds for denial or termination of racing privileges – other than associations

A. The commission may refuse, suspend, or withdraw licenses, permits, and privileges granted by it or terminate racing privileges for just cause in accordance with the provisions of Subsection B of this Section. Those things constituting just cause are:

(1) Any action or attempted action by a permittee contrary to the provisions of this Part and law.

(2) Corrupt practice.

(3) Violation of the Rules of Racing.

(4) Willful falsification or misstatement of fact in an application for racing privileges.

(5) Material false statement, under oath, to a racing official, other than a commissioner, or to the commission.

(6) Willful disobedience of a commission order or of a lawful order of a racing official other than a commissioner.

(7) Continued failure or inability to meet financial obligations connected with his business, occupation, or profession performed or engaged in on the track grounds.

(8) The loss or inability to meet any of the qualifications and conditions set forth for a license in R.S. 4:150(B)(1), (2), (3), (4), (5), (6), (7), (8), (9), (11) and (12).

B. Notwithstanding the provisions of Subsection A of this Section, the commission shall suspend for a period of one year all licenses, permits, and privileges granted to any horseman, jockey, rider, groom, stable foreman, exercise boy, valet, plater, licensee, permittee, racing official, agent, apprentice, custodian, caterer, partnership, vendor, veterinarian, or other person who, within a period of one year, is suspended five times for a period of at least five days each time for commission of acts constituting just cause under Subsection A of this Section. However, in the case of riding offenses only, the commission shall have

the discretion to suspend such licenses, permits, or privileges. Any person aggrieved by such order of suspension as provided for herein shall have the right to contest such order and have the entire matter reviewed in a court of competent jurisdiction as provided in R.S. 4:154 and R.S. 49:951 et seq.

* * *

§ 154. Administrative procedure; appeal to the commission and review of commission rulings

A. Except as otherwise provided by this Section, the commission's hearings, practice and procedure, and rule making procedure are as provided in the Administrative Procedure Act [FN1]; however, in cases made the subject of judicial review, the court may not extend or continue beyond ten (10) days from date of issuance any stay order or temporary restraining order issued by it, except:

(1) Upon agreement of counsel for all parties, or

(2) Absent such agreement, by order of the court, but only after a contradictory hearing held no later than the tenth (10th) day following the issuance of such stay order or temporary restraining order and then only upon a showing by a party that a denial of such extension or continuation would be prejudicial to that party's opportunity to cause the court to affirm, modify, or reverse the decision appealed from or to be reviewed.

B. A final appeal, in the case of any person penalized, or disciplined by the stewards, may be taken to the commission.

C. Such an appeal must be filed in writing at the office of the commission within five days of the date of said penalty or imposition of said discipline.

D. Such an appeal must be signed by the person making it and must set forth his reason therefor.

E. An appeal from the decision of the stewards to the commission shall not affect such decision until the appeal has been acted upon by the commission.

F. The commission must grant a hearing within ten days of the receipt of this appeal, and must render a decision within forty-eight hours following the conclusion of the appeal hearing. Any continuance of a hearing must be reasonable in duration and for just cause.

* * *

§ 169. Licenses, registrations, fees for participating in racing

A. (1) The following persons shall be required to take out a license from the commission, and the annual fee shall be as follows:

(*not reproduced*)

(2) All licenses must be taken out forty-eight hours after arrival except out-of-state owners may be allowed not more than ten days.

B. (1) Licenses and registrations expire June thirtieth of each year and may be renewed by mailing full payment of the appropriate renewal license fee or renewal registration fee to the commission. Effective on July 1, 1987 owners, trainers, jockeys, jockey agents, exercise persons, and veterinarians may have the option of

obtaining a license for a thee-year period to expire June thirtieth of the third year. Colors may also be registered for a three-year period to expire June thirtieth of the third year. The fee for the three-year license shall be as follows:

Recording and registration fees

(*not reproduced*)

(2) It shall be the responsibility of each owner, trainer, jockey, jockey agent, exercise person, and veterinarian licensed under this Section to notify the commission if they become ineligible for a license or registration.

C. All other persons not specifically provided for shall be required to take out an annual license. The amount of the license or occupational fee shall be twenty-five dollars.

D. No person shall be eligible for an owner's or trainer's license if, during the term of such license, he would act as plater or veterinarian with horses racing under the jurisdiction of the commission.

E. Each owner and/or trainer shall be held responsible for the licensing of each and every employee under his jurisdiction.

F. Licenses, registrations, and fees for participating in racing shall be nonrefundable.

G. The provisions of this Section shall not apply to duly sworn state or local law enforcement officers.

* * *

§ 172. Stewards; authority, powers and duties; fines and suspensions

A. In the matters pertaining to racing, the orders of the stewards supersede the orders of the officers and directors of the association and the stewards shall have supervision of the daily conduct of racing. The stewards have full authority to investigate, inspect, search and inquire into all matters under their supervision.

B. Should any case occur which may not be covered herein or by the Rules of Racing, it shall be determined by the commission and implemented by the stewards but only insofar as such determination is consistent with justice, the best interest of racing, and the powers and authority herein granted; and when no penalty is provided, the stewards of the meeting are hereby given authority to exercise their full power as set forth in Subsection M hereof.

C. The stewards have general supervision over all personnel directly connected with racing and shall have access to all stands, weighing rooms, enclosures, etc., used for the purpose of racing and have the authority to determine all questions concerning entries and racing.

D. The stewards shall order ejected from the grounds of the association any improper or objectionable persons.

E. The stewards may demand proof that a horse is not in any way disqualified. In default of proof the horse may be barred.

F. The stewards may examine or have examined any horse registered for racing.

G. Three stewards must be on duty during race time. One steward must be on duty each morning from scratch time until the entries are closed.

H. During each racing day the stewards of the meeting shall assemble at the office building on the grounds of the association where the race meeting is being held, not later than two hours before post time of the first race, to exercise the authority and perform the duties imposed on them by the rules of racing.

I. If one or more stewards are absent the ones present shall appoint a deputy or deputies to act temporarily for those absent. Should all three be absent the racing secretary shall appoint three deputies.

J. The stewards may substitute a jockey of their choice on any horse.

K. The stewards are vested with the power to determine the extent of disqualification in case of fouls.

L. Action by the stewards in performing their duties shall be reported to the Louisiana State Racing Commission. Where one steward disagrees with the majority that fact shall be noted in the report and the dissenting steward shall have the right to file with the commission a written report setting forth the reason or reasons for the disagreement. The stewards shall keep a minute book, recording therein all complaints made to them and the disposition thereof and all investigations by the stewards and their findings thereon and all rulings made by the stewards.

M. The stewards may suspend for no greater period than the duration of the meeting plus ten days or for a

period not to exceed six months, whichever is greater, or they may impose a fine not to exceed one thousand dollars. All such suspensions and fines must be reported to the commission. If the greater period of suspension and the fine herein authorized is not in the opinion of the stewards sufficient, they shall refer the matter to the commission for its determination de novo.

N. A fine may not be rescinded by the stewards except with the approval of the commission.

O. Fines and suspensions shall be reported promptly to the racing secretary in writing. Fines shall be paid within forty-eight hours.

P. Fines collected by the racing secretary shall be paid to the commission.

Q. In addition to the above, the stewards shall have those authorities, powers and duties as are prescribed and conferred by the commission not inconsistent with this Part, including by way of illustration those provided by the rules of racing.

LOUISIANA REVISED STATUTES
TITLE 49. STATE ADMINISTRATION
CHAPTER 13. ADMINISTRATIVE PROCEDURE

§ 950. Title and form of citation

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

§ 951. Definitions

As used in the Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than

an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(*Paragraphs (6) amd (7) not reproduced*)

* * *

§ 955. Adjudication; notice; hearing; records

A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy

involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered or a resume thereof if not transcribed;

(3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;

(4) Offers of proof, objections, and rulings thereon;

(5) Proposed findings and exceptions;

(6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

* * *

§ 961. Licenses

A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

* * *

§ 964. Judicial review of adjudication

A. (1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(2) No agency or official thereof, or other person acting on behalf of an agency or official thereof shall be entitled to judicial review under this Chapter.

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after mailing of notice of the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

C. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules

of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court

may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(7) In cases covered by R.S. 15:1171 through 1177, manifestly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the

reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

§ 965. Appeals

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.

APPENDIX B

FIFTEENTH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

BILLY PATIN

VERSUS

DOCKET NO: 992581-C

LARRY MUNSTER, E.J. FAYARD and C.L. WEBB

****

ORIGINAL PETITION FOR INJUNCTIVE RELIEF AND DAMAGES

(Filed June 1, 1999)

Billy Patin, a person of the age of majority domiciled in St. Martin Parish, Louisiana, complaining of the actions of Larry Munster, State Steward, E.J. Fayard, Association Steward, and C.L. Webb, Association Steward for the Louisiana State Racing Commission, and all domiciled in Lafayette Parish Louisiana, respectfully represents that:

1.

Billy Patin is a jockey licensed by the Commission to race horses in the State of Louisiana for the 1998/1999 racing season, which he engages in as a means of earning a living.

2.

Larry Munster, State Steward, E.J. Fayard, Association Steward, and C.L. Webb, Association Steward, ("the stewards"), are stewards appointed by the Louisiana Racing Commission with the power to withdraw the licenses of jockeys in the State of Louisiana.

3.

On May 27, 1999, at approximately 12:00, noon, Billy Patin's attorney, J. Minos Simon, received a faxsimile transmission of a "notice of hearing," the purpose of which notice declared that:

> "an administrative hearing will be held regarding Jockey Billy Patin's eligibility in accordance with LRC 4:150 and LRS 4:152. The hearing will be held on May 27, 1999, At 5:30 PM in the steward's office at Evangeline Downs. This notice is to advise you of your right to have an attorney present at this hearing.

4.

At 5:30 p.m. on May 27, 1999, Billy Patin, appearing through his counsel, J. Minos Simon, appeared at the steward's office at Evangeline Downs, and objected to the hearing scheduled because the "notice" cited above was not in accordance with the Administrative Procedure Act, La.R.S. 49:955, which states, in pertinent part, that:

> A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.
>
> B. The notice shall include:
>
> (1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to *the particular sections* of the statutes and rules involved;

(4) A short and plain *statement of the matters asserted.*

The "notice" by the Stewards, cited above and attached hereto as Exhibit "A," failed to afford Billy Patin with reasonable notice, under the circumstances, of "the particular sections of the statutes and rules involved", and did not contain "a short and plain statement of the matters asserted," in violation of the Administrative Procedure Act, La.R.S. 49:955(3) and (4).

5.

At the same date and time mentioned above, Billy Patin, appearing through his counsel, J. Minos Simon, objected to the "notice" provided by the Stewards as insufficient in that said "notice," given less than five and a half hours prior to the scheduled adjudication, was not reasonably calculated, under all the circumstances, to apprise Billy Patin of the pendency of the adjudication contemplated and to enable Billy Patin to effectively respond to the noticed adjudicative hearing in violation of his rights under the Due Process Clauses of the United States and Louisiana Constitutions, and the Fourteenth Amendment to the United States Constitution.

6.

In addition, the "notice" of the Stewards, which was sent by faxsimile mail, failed to comport with the requirements of the Administrative Procedure Act, La.R.S. 4:961(C), which states, in pertinent part, that:

> C. No revocation, suspension, annulment, or withdrawal of any license is lawful **unless, prior to the institution of agency proceedings, the agency gives notice *by mail* to the licensee *of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license.***

(emphasis added). The "notice" afforded Billy Patin was not mailed to Billy Patin, and did not contain any mention of the "facts or conduct which warrant the intended action," as required by La.R.S. 4:961(C).

7.

On entering his afforesaid objections, Billy Patin and his attorney refused to participate in any hearing and withdrew from said noticed adjudication.

8.

Nonetheless, on May 27, 1999, Larry Munster, State Steward, E.J. Fayard, Association Steward, and C.L. Webb, Association Steward, officially adjudicated the right of Billy Patin in his jockey's license, and as a result forthwith withdrew the jockey license issued to Billy Patin for the 1998/1999 racing season. As a result, Billy Patin was denied of his right to contract to ride horses at

Evangeline Downs Racetrack due to the illegal acts of defendants.

9.

Billy Patin is informed, believes, and therefore avers that in support of their adjudication of Billy Patin's property interest in his jockey's license, the Stewards, relied upon no competent evidence and did not hear testimony of any witnesses. Billy Patin is informed, believes, and therefore avers that the only basis for the Stewards' withdrawal of Billy Patin's jockey license was defendants' reliance on an alleged faxsimile transmission of a purported ruling made by the Arkansas Racing Commission, which faxsimile was not certified, whereby said commission purportedly suspended Billy Patin's license to function as a jockey in the State of Arkansas only.

10.

Billy Patin is informed, believes, and therefore avers that Larry Munster stated that he received information as to the Arkansas State ruling from a female voice over the telephone, which voice Munster had never heard before in his life, which person he had never seen in his life, and which person he had never met in his life.

11.

The faxsimile transmission of the ruling of the Arkansas Racing Commission is not a "judgment, decree, or order of a court of the United States or of any other court," and, as such, cannot be made executory under the

Enforcement of Foreign Judgments Act, La.R.S. 13:4241, et seq.

12.

In the alternative, in the event that this Court determines that the decision of the Arkansas Racing Commission is a "judgment" within the definition of the Enforcement of Foreign Judgments Act, petitioner shows this Honorable Court that the ruling of the Arkansas Racing Commission has not been made executory by any Louisiana court as required by Code of Civil Procedure Article 2541 and, as such, is not effective in the State of Louisiana.

13.

In violation of the law of Louisiana as herein aforesaid, said defendants herein, in the exercise of raw power, gave effect to the foreign ruling of the State of Arkansas, as herein aforesaid, and in willful violation of Billy Patin's constitutional liberty, took from him his license as a jockey and thereby robbed him of his right to earn a livelihood.

14.

As a result of the Stewards' unconstitutional adjudication of Billy Patin's property and liberty rights as herein aforesaid, Billy Patin has been made to suffer irreparable injury and unless defendants are enjoined, he will continue to suffer irreparable injury, all in violation of his constitutionally secured property and liberty

rights. Billy Patin will continue to suffer irreparable injury before a hearing can be held on this matter.

WHEREFORE, petitioner prays that a temporary restraining order forthwith issue herein, enjoining, restraining, and prohibiting defendants herein, and each of them, from maintaining and/or enforcing their ruling issued by these defendants on May 27, 1999, and/or from depriving Billy Patin from engaging in the business of a duly licensed jockey to ride any eligible horse at Evangeline Downs or any other racetrack in Louisiana.

Petitioner prays for the issuance of a rule nisi ordering said defendants, and each of them, to show cause on a date determined by the court why a preliminary injunction in the nature and scope of the temporary restraining order should not be granted.

Petitioner further prays that, on due hearing, a permanent injunction be issued in the nature and scope of the temporary restraining order, and that petitioner have judgment granting a monetary award, including both compensatory and punitive damages, reasonable in the premises.

Respectfully submitted:

J. MINOS SIMON, LTD.
J. MINOS SIMON
1408 West Pinhook Road
Post Office Box 52116
Lafayette, Louisiana 70505-2116
Telephone: (318) 233-4625

BY: /s/ J. Minos Simon
J. MINOS SIMON (12278)
Attorney for Plaintiff

FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE
STATE OF LOUISIANA

BILLY PATIN

VERSUS **DOCKET NO:** _____

LARRY MUNSTER, E.J. FAYARD and C.L. WEBB

****

TEMPORARY RESTRAINING ORDER

Plaintiff's Application for a Temporary Restraining Order in connection with the captioned matter is hereby GRANTED, and accordingly,

Defendants, Larry Munster, E.J. Fayed, and C.L. Webb, and each of them, are hereby enjoined, restrained, and prohibited from maintaining and/or enforcing their ruling issued by these defendants on May 27, 1999, and/or from depriving Billy Patin from engaging in the business of a duly licensed jockey to ride any eligible horse at Evangeline Downs or any other racetrack in Louisiana.

This order is granted without notice of a hearing based on the affidavit of petitioner's attorney to the effect that said attorney communicated in person to the defendants that the notice of such a hearing was neither timely and the substance of the hearing was legally insufficient and that the notice existed in violation of the Louisiana Administrative Procedure Act, which requires service on Billy Patin by mail; therefore, any notice of the issuance of this temporary restraining order would not alter the action of these defendants nor would they be informed of the reason for issuing this temporary restraining order

because they have already been so informed, properly, by plaintiff's counsel and to duplicate the transmission of such information would be for the court to engage in an inane course of conduct and a squandering of judicial time and economy.

This temporary restraining order is granted on the 29th day of May, 1999, at 5:25 o'clock, p.m., and will be effective for a period of ten (10) days from the date hereof.

This temporary restraining order is granted upon petitioner filing a bond in the amount of $1,000.00 dollars as required by law.

/s/ [Illegible]
DISTRICT JUDGE

May 29, 1999

FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE
STATE OF LOUISIANA

BILLY PATIN

VERSUS **DOCKET NO:** _____

LARRY MUNSTER, E.J. FAYARD and C.L. WEBB

****

AFFIDAVIT
IN SUPPORT OF TEMPORARY
RESTRAINING ORDER

(Filed June 1, 1999)

J. Minos Simon, being duly sworn, did depose and say:

1. That he is attorney for Billy Patin in connection with the captioned matter;

2. That all of the allegations of fact contained in the petition herein are true and correct to the best of his knowledge, information, and belief;

3. That on May 27, 1999, after receiving the notice mentioned in the petition herein, he appeared before defendants herein at Evangeline Downs Racetrack; that during that appearance he entered the objections mentioned herein, fully informed these defendants that notice of the hearing was improper and unlawful; that any reliance upon any alleged ruling of the Arkansas State Racing Commission was illegal; that before any such ruling could be acted upon by defendants the laws of Louisiana require that said ruling had to be recognized

by a district court of Louisiana with proper jurisdiction and its enforcement ordered or directed by such a court; that taking any action against Baily Patin as contemplated by the notice mentioned herein would violate Billy Patin's statutory and constitutional rights; that the alleged ruling of the Arkansas Racing Commission applied only in the State of Arkansas, that it was not a final ruling but subject to review and reversal by the Arkansas circuit court having jurisdiction thereof; that said defendants were informed that should they proceeded to take action adversely affecting Billy Patin's rights and privileges as a duly licensed jockey in the State of Louisiana that judicial relief from this court would be immediately applied for to annul their actions; that to give notice of the captioned matter would simply duplicate the notice already given to these defendants and would not inform these defendants of anything of which they have not been informed nor would it cause these defendants to comply with the laws of the State of Louisiana as they have knowingly elected to violate those laws as herein aforesaid.

Further, affiant sayeth not.

/s/ J. Minos Simon
J. MINOS SIMON

Thus sworn to and subscribed by me, the undersigned authority, on this 29th day of May, 1999, at Lafayette, Louisiana.

/s/ [Illegible]
NOTARY PUBLIC

FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE
STATE OF LOUISIANA

BILLY PATIN

VERSUS **DOCKET NO:** _____

LARRY MUNSTER, E.J. FAYARD and C.L. WEBB

****

BOND

(Filed June 1, 1999)

We, Billy Patin, as principal, and Joseph Patin, Sr., as surety, bind ourselves to be responsible for the payment of such damages as may be suffered, if the temporary restraining order is held to have been wrongfully obtained in connection with the captioned matter. For the performance of this obligation, the principal and surety hereby obligate themselves in solido to Ann Ardoin, Clerk of the Fifteenth Judicial District Court, for the Parish of Lafayette in the sum of $1000 dollars.

Lafayette, Louisiana, this 29 day of May, 1999.

/s/ Billy Patin
Principal

/s/ Joseph Patin, Sr.
Surety

FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE
STATE OF LOUISIANA

BILLY PATIN

VERSUS

LARRY MUNSTER, E.J. FAYARD and C.L. WEBB

DOCKET NO: 992581-C

****

MOTION FOR RENEWAL OF TEMPORARY RESTRAINING ORDER

Billy Patin, appearing through undersigned counsel for cause herein respectfully represents that

1.

On May 29, 1999, the court granted a temporary restraining order against the defendants in the captioned matter effective for a period of ten (10) days from May 29, 1999.

2.

The said temporary restraining order will expire by its own terms on June 8, 1999, unless renewed and extended.

3.

The same imperative grounds of irreparable injury continue and unless the temporary restraining order is

renewed and extended for an additional period of ten (10) days, movant will suffer irreparable injury.

4.

The court has assigned a hearing on movant's request for a preliminary injunction for the 16th day of August, 1999, but the temporary restraining order will expire before a hearing may be had on the preliminary injunction and therefore said temporary restraining order should be renewed and extended for an additional ten (10) days from June 8, 1999.

Respectfully submitted,

J. MINOS SIMON, LTD.
J. MINOS SIMON
1408 West Pinhook Road
Post Office Box 52116
Lafayette, Louisiana 70505-2116
Telephone: (318) 233-4625

BY: /s/ J. Minos Simon
J. MINOS SIMON (12278)

APPENDIX C

2001 WL 32198
(Cite as: 2001 WL 32198 (Ark.))
Only the Westlaw citation is currently available.

Supreme Court of Arkansas.

James D. JACKSON, Appellant,

v.

ARKANSAS RACING COMMISSION, Appellee.

No. 00-435.

Jan. 11, 2001.

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, NO. 99-3572, HONORABLE JOHN C. WARD, CIRCUIT JUDGE.

W.H. DUB" ARNOLD, Chief Justice.

*1 The Court of Appeals certified this case for us to consider an issue of first impression, constitutional interpretation, and substantial public interest involving the construction of the Rules and Regulations of appellee Arkansas Racing Commission. Our jurisdiction is authorized pursuant to Ark. R. Sup.Ct. 1-2(d) and 1-2(b)(1), (3), (4), (5), and (6) (2000). Appellant, James D. Jackson, brings the instant appeal from a Pulaski County Circuit Court order affirming appellee's decision disqualifying appellant's horse, Valhol, from the Arkansas Derby run on April 10, 1999, at Oaklawn Park, in Hot Springs, Arkansas, and ordering the forfeiture, return, and redistribution of the purse, trophy, and first-place award.

Billy Patin, a jockey licensed by appellee, rode Valhol in the Derby at the request of appellant and Dallas Keene,

the horse's trainer. Although Valhol won the race by four-and-a-half lengths, Oaklawn Park officials discovered a "battery" on the track immediately following the race. A battery is a small electrical device that, if used, could alter the outcome of a race by increasing the horse's speed. Possession of such an electrical device is prohibited by appellee's rules 1214 and 2128[1]. While reviewing a videotape of the race, Oaklawn Park officials observed that Valhol's jockey dropped a dark object on the track after crossing the finishing line.

Subsequently, track stewards investigated the incident and, following a hearing on May 5, 1999, suspended and fined the jockey, disqualified the winner, Valhol, and redistributed the purse money.[2] Jackson appealed the stewards' decision to the Arkansas Racing Commission. At a May 24, 1999 hearing, appellee upheld the stewards' ruling. In particular, the commission found that "Billy C.

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[1] Rule 1214, contained in the Arkansas Racing Commission's Rules and Regulations' section entitled "Corrupt, Fraudulent and Prohibited Practices," provides that no electrical or mechanical device or other expedient designed to increase or decrease the speed of a horse, or that would tend to do so, other than the ordinary whip, shall be possessed by any one or applied by anyone to a horse at any time on the grounds of a franchise holder during a Meeting whether in a race or otherwise. Located under the section entitled "Owners and Trainers," rule 2128 states that no person licensed by the Commission shall have in his possession on or about any race track any appliance, electrical, mechanical, or otherwise which could affect the racing condition or speed of a horse.

[2] Rule 2068 authorizes the stewards to impose fines or suspensions, or both, for infractions of the rules. Rule 2070 permits the stewards to suspend a person or disqualify a horse.

Patin was in possession of an electrical device during the running of the Arkansas Derby." Consequently, appellee also disqualified Valhol and ordered the purse money redistributed.

Next, Jackson appealed the commission's decision to the Pulaski County Circuit Court. The circuit court affirmed. In the instant appeal, Jackson challenges the circuit court's order and raises four points urging reversal. First, he claims that appellee's rules do not authorize it to redistribute purse money. Second, he argues that such punishment is unwarranted because he was unaware that his jockey possessed an unauthorized electrical device, and appellee made no finding that the device was used or that the outcome of the race was altered. Third, appellant contends that the punishment is unconstitutional and a violation of his due-process rights. For his final point on appeal, Jackson submits that appellee and Oaklawn bear some responsibility for failing to protect him, and other horse owners, from the unauthorized actions of their jockeys. We find no merit in appellant's arguments, and we affirm the circuit court's decision.

I. Motion to strike Oaklawn's brief and oral argument

*2 As a preliminary matter, we consider appellant's motion to strike Oaklawn's appellate brief. First, we acknowledge that Oaklawn has participated throughout the course of this litigation, without prior objection and with appellant's consent. In fact, appellant urged Oaklawn to award the Derby prize money to him. Oaklawn opposed appellant's position and presented the

case against him, his trainer, and his jockey. Second, we note that appellant benefits from Oaklawn's brief, which contains a supplemental abstract consisting of a condensation of the material rules at issue in this appeal. In this respect, appellant's brief was insufficient by its failure to abstract all "matters in the record as are necessary to an understanding of all questions presented to the Court for decision." See Ark. R. Sup.Ct. 4-2 (2000).

Third, given appellant's final point on appeal, urging this court to recognize that Oaklawn had a duty to protect him from his jockey's actions, we are reluctant to deny Oaklawn the opportunity to respond to appellant's argument. Accordingly, we deny appellant's motion to strike Oaklawn's brief. Similarly, we deny appellant's untimely oral motion to strike Oaklawn's oral argument.

II. Appellee's authority to redistribute purse

Jackson argues that appellee's rules and regulations do not authorize disqualification of a horse and redistribution of the purse for mere possession of a prohibited battery because no specific rule expressly creates authority for imposing those sanctions. However, appellant concedes that the rules permit such punishment when a horse tests positive for drugs. Given the rules' silence on the specific circumstances raised in his case, Jackson reasons that the commission's decision was erroneous.

The circuit court found appellant's arguments unpersuasive. In a December 14, 1999 letter opinion, the court concluded that the record contained "substantial, almost overwhelming evidence, that jockey, Patin, possessed an electrical, and prohibited, battery powered device, which

he discarded after the finish of the race." In the court's opinion, possession of the device, alone, was sufficient to sustain the sanction. The court determined that the sanctions against the jockey were justified in light of the commission's responsibility to protect the public interest in the sport of horse racing. The court explained that racing fans have:

> . . . a right to trust that the outcome of thoroughbred races will depend on the traditional considerations, including the natural abilities and characteristics of the horses, riders and trainers, and not on the effects of a battery powered device. Violation of that trust merits the sanction.

According to the court, "disqualification and redistribution are reasonable, even expected sanctions for violation of rules 1214 and/or 2128."

The court also noted that the commission is vested with sole jurisdiction over the business and sport of horse racing in Arkansas and may take what action it deems necessary to supervise, regulate, and control, in the public's interest, horse racing. See Ark.Code Ann. § 23-110-204(a)(6) (Repl.1999). Moreover, pursuant to rule 2061, the stewards are empowered to interpret the commission's rules and "to decide all questions not specifically covered by the Rules." In sum, the court found that by entering Valhol in the Derby, Jackson knew or should have known that it was a violation for his jockey to possess an electrical device and that the stewards were authorized to suspend the jockey and disqualify the horse for such an infraction of the rules.

*3 We agree with the circuit court's findings. As the court observed, the rules contain a number of violations that contain no sanction following the rule. Nevertheless, the stewards are empowered to punish violations of those rules, including disqualification of a horse. Given the paramount interest of protecting the public and the broad authority of the racing stewards and the commission to regulate the sport of horse racing, we decline to conclude that the rules did not permit the instant sanctions.

III. Burden of proof

Appellant also objects to the sanctions imposed upon him because they resulted from an infraction committed by another (i.e., his jockey). For his second point on appeal, Jackson claims that the commission's rules require proof that he either knew his jockey possessed the prohibited electrical device, that the device was used, or that the outcome of the race was altered. In response, appellee cites the applicable standard of review. An administrative agency's decision may be overturned if the petitioner's substantial rights have been prejudiced because the decision was: (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's authority; (3) made upon unlawful procedure; (4) affected by other error of law; (5) not supported by substantial evidence of record; or (6) arbitrary, capricious, or characterized by an abuse of discretion. See Ark.Code Ann. § 25-15-212(h) (1997). In light of the appellant's burden of proof and the deference afforded agency decisions, appellee maintains that the circuit court's decision should be affirmed.

Indeed, we must give the evidence its "strongest probative force in favor of the agency's ruling." Arkansas State Police Comm'n v. Smith, 338 Ark. 354, 357, 944 S.W.2d 456, 458-59 (1999). We have acknowledged that administrative agencies are better equipped by specialization, insight through experience, and more flexible procedures than courts, to determine and analyze the unique legal issues affecting their agencies. Id. We have also held that between two fairly conflicting views, even if the reviewing court might have made a different choice, the board's choice must not be displaced. Northwest Sav. & Loan Ass'n v. Fayetteville Sav. & Loan Ass'n, 262 Ark. 840, 847, 562 S.W.2d 40, 52 (1978).

Here, we cannot say that the commission's decision was unsupported by the evidence or arbitrary and capricious. In fact, as the circuit court pointed out, the racing rules do not require proof of collusion because of the balancing in favor of the public's interest. See D'Avignon v. Ark. Racing Comm'n, 279 Ark. 355, 651 S.W.2d 87 (1983). Giving appropriate deference to the agency's interpretation of its own rules, we reject appellant's argument that the commission failed to meet its burden of proof. We affirm the circuit court's finding that possession of the device, alone, was sufficient to sustain the sanctions.

IV. Constitutionality of sanctions

*4 Jackson maintains that the sanctions imposed upon him were unconstitutional because appellee violated his due-process rights. Along the same lines as his

burden-of-proof argument, Jackson insists that the sanctions are unlawful in the absence of evidence of complicity between Jackson and his jockey. As a result, he claims that the stewards' and appellee's actions were arbitrary and capricious. We find no merit in appellant's argument.

Significantly, this court has recognized that liability may be imposed without fault and may be necessary for the protection of the public. See D'Avignon v. Arkansas Racing Comm'n, 279 Ark. 355, 358, 651 S.W.2d 87, 88 (1983). In D'Avignon, the appellant's dog-trainer's license was suspended for sixty days after a dog tested positive for drugs. The applicable rules made a trainer an absolute insurer of the condition of a dog's entry, regardless of acts by third parties. On appeal, D'Avignon argued that the absolute-insurer rule was unconstitutional. We disagreed.

Although the facts in D'Avignon involved an absolute-insurer rule, the reasoning underlying our decision applies equally well in the instant case. We commented that:

> the enterprises of horse and dog racing are especially susceptible to fraud and deceit because of the parimutuel wagering. . . . [I]t is imperative that society be afforded as much protection as possible to prevent abuses. For these reasons, we find the absolute insurer rule (Rule 1233) a constitutional and valid exercise of the police power of this state.

D'Avignon, 279 Ark. at 358, 651 S.W.2d at 88. Here, the commission's rule 1214 expressly and plainly prohibited possession of an electrical device. Appellant's jockey

violated that rule. In light of the state's interest in affording the public "as much protection as possible to prevent abuses," we cannot say that Jackson's constitutional rights were violated in the instant case when sanctions were imposed upon him without proof of fault. See id.

Moreover, the commission was expressly authorized to "take such other action, not inconsistent with the law, as it may deem necessary or desirable to supervise and regulate, and to effectively control in the public interest, horse racing in the State of Arkansas." (Emphasis added.) Ark.Code Ann. § 23-110-204(a)(6) (Repl.1999); compare D'Avignon, 279 Ark. at 358, 651 S.W.2d at 88 (quoting Arkansas Racing Comm'n v. Hot Springs Kennel Club, Inc. ., 232 Ark. 504, 339 S.W.2d 126 (1960)). Possession of the device violated rule 1214, and no other rule required the commission to find that Jackson was aware his jockey possessed the device or that the device actually altered the race's outcome. Given the rule's violation, disqualification resulted. In conclusion, we agree with appellee that Jackson has not proven that the commission's actions were arbitrary or capricious or that his constitutional rights were violated.

V. Duty to protect

*5 Jackson's final point on appeal concerns obligations the commission and Oaklawn may owe to horse owners to protect them from the unauthorized actions of their jockeys. Appellant suggests that appellee and Oaklawn should have utilized rule 2064 to "search the person, or enter and search the stables, rooms, vehicles, or other places within the track enclosure at which a

meeting is held . . . of all persons licensed by the Commission, and of all employees and agents of any race track operator. . . . " Appellant argues that the failure to conduct a rule 2064 search shifts liability to the commission and the track.

The Arkansas Racing Commission is the licensing authority for all jockeys in the State of Arkansas. However, as appellee points out, the commission has no duty, arising from any statute or other authority, to protect owners from the fraudulent or negligent acts of their own jockeys. Further, the commission illustrates that appellant was in the superior position to protect himself from his jockey's fraudulent act. Jackson entered into a contract with Patin to ride Valhol in the Arkansas Derby. Jackson had the opportunity to monitor his jockey, and Valhol's trainer had a similar opportunity. Apparently, Jackson and Valhol's trainer were satisfied with Patin because he was permitted to ride in the Derby.

Oaklawn agrees with the arguments advanced by the commission. Oaklawn's General Manager, Eric Jackson, also claims that protective measures were unnecessary because only two prohibited electrical devices have been discovered at the track in twenty years. In any event, appellant has failed to cite any authority to lend support to his theory that either the commission or Oaklawn bears liability for a jockey's corrupt, fraudulent, or prohibited practices. We agree that Jackson was in the best position to observe his jockey and to make decisions about his suitability to ride Valhol in the Arkansas Derby. In the absence of any statute or rule imposing a duty on appellee or Oaklawn to protect appellant from his

jockey's negligent or fraudulent actions, we reject Jackson's argument that such a duty was breached.

Affirmed.

GLAZE, IMBER, THORNTON, HANNAH, JJ., not participating.

GEAN, FERGUS and W.H. DILLAHUNTY, Sp. JJ., concur.